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MEASURE READ FOR SECOND TIME—H.R. 1

The ACTING PRESIDENT pro tempore. The clerk will read for the second time from the calendar, under bills and joint resolutions read the first time, H.R. 1.

The legislative clerk read as follows:

A bill (H.R. 1) to amend the Civil Rights Act of 1964 to restore and strengthen civil rights laws that ban discrimination in employment, and for other purposes.

Mr. MITCHELL. Mr. President, I object to further proceedings with respect to the consideration of H.R. 1.

The ACTING PRESIDENT pro tempore. Objection is noted.

INDEPENDENCE OF THE JUDICIARY

Mr. HATCH. Mr. President, special interest groups seeking to impose litmus tests on judicial nominees as a precondition of their confirmation threaten to destroy the independence of the Federal judiciary. The single-minded, rule-or-ruin desire to assure preordained votes on particular issues is an assault on the role of the judiciary as a coequal branch of our tripartite central government. The drive by special interest advocacy groups to achieve short-term political gain by blocking a nominee they believe will disagree with them on a particular issue or set of issues will do long-term—and perhaps permanent—damage to the judiciary as an institution.

The independence of the Federal judiciary is equally important to all Americans. This is not a liberal or conservative issue. Liberals and conservatives should be equally troubled by any threat to judicial independence. Regardless of one's views on affirmative action, church-state relations, the first amendment, or abortion, the Senate should not be party to efforts to diminish the independence of the judiciary for the sake of assuring that particular cases or issues are decided in a manner satisfactory to some or most Members of the Senate.

Americans expect that each Federal judge and each Supreme Court Justice will fairly assess the merits of every case as the judge or Justice sees them.

Americans do not want judges deciding cases based on express or implied commitments to the President, the Senate, or individual Senators. Americans do not want judges deciding cases based on what some special interest advocacy group will think about the decision.

NOMINATION OF CLARENCE THOMAS

Mr. HATCH. Mr. President, I have a great deal of respect for Barbara Reynolds, inquiry editor of USA Today. She is certainly entitled to express whatever views she has on Judge Clarence Thomas—indeed, she has grudgingly urged his confirmation. But I am shocked and dismayed by many of the comments she made regarding Judge Thomas, whom I have known for over 10 years, and about his wife. Her July 5, 1991, column is laced with innuendoes and inappropriate personal attacks. I want to respond to some of them. Judge Thomas is constrained to be silent until his confirmation hearings and cannot readily respond. But I would like to do so on my own, as his friend.

She said that Judge Thomas "strikes me as a man who would get a note from his boss before singing 'we shall overcome.'" Anyone who knows Judge Thomas knows he is very much his own man. He is fiercely independent.

Next, it is claimed that Judge Thomas, while Chairman of the EEOC "spent much of his time stalling age, sex, and racial discrimination cases." In fact, the EEOC, under his chairmanship, brought to the courts an impressive number of those cases, rising from 195 in fiscal year 1983 to a record 599 in fiscal year 1989. A May 17, 1987, editorial of the Washington Post, no shill for Reagan civil rights policies, entitled "The EEOC Is Thriving," praised "the quiet but persistent leadership of Chairman Clarence Thomas * * *."

He did not oppose reverse discrimination. He has asserted that our Nation's civil rights laws should be equally applicable to everyone, regardless of race, color, or creed.

Next, Ms. Reynolds says about Judge Thomas, "if he is influenced by his wife, a white conservative who lobbied against comparable pay for women, he will be antiwomen's issues." Now, Mr. President, let us ponder that one for a moment, because it packs an impressive number of innunendoes into 23 words. Why should we consider whether this particular nominee will be influenced by his wife in his role as Justice? Did anyone ask white male nominees whether they would be influenced by their wives? Is it relevant that his wife is "white" or that she is a conservative? Does it matter that she lobbied against so-called comparable worth, a so-called theory of pay discrimination that has been thoroughly discredited by economists and virtually all courts considering it? Opposing comparable worth is not antiwomen; it is common sense. Congress has declined to enact legislation calling for a comparable worth study of the Federal work force in three consecutive Congresses. Why would anyone drag Mrs. Thomas into this? And, incidentally, as chairman of the EEOC, Judge Thomas had concluded all on his own that comparable worth is not a cognizable discrimination theory under title VII of the 1964 Civil Rights Act.

Finally, in endorsing his nomination, Ms. Reynolds says, "* * * if Hugo Black, who once was a member of the KKK could become a distinguished liberal justice, there is hope that a Negro can turn black. Maybe Thomas, who would have lifetime employment as a Justice, could find his soul."

Mr. President, this is ugly business. If I had not read it with my own eyes, I would not have believed she could say that about Clarence Thomas. This vile slur suggests that if a black American does not think like the traditional civil rights leadership, he or she is not really black. This is political correctness at its worst.

What really bothers some people about this nomination is that it highlights highly respectable views held by some black Americans who do not march in lockstep with what is usually called the traditional civil rights leadership. Mr. President, regardless of whether one is sympathetic to the views of Judge Thomas and other black Americans who agree with him, this kind of ad hominem, anti-intellectual attack diminishes the debate. This kind of effort to enforce political correctness is grossly unfair.

I hope the debate over this nomination does not continue to sink to this level.

Mr. President, I have known Clarence Thomas now for around 10 years. I have to tell you he is a very intelligent person. He is a masterful human being. He is fiercely independent. He has worked his way up the hard way. He came from abject poverty. He knows the sting of discrimination. He knows what it is like to go to segregated schools. He has been through all of that, but he happens to be a little different in philosophy from those who are on the far left. By the way, he happens to be a little different from those who are on the far right, too.

He is not an extremist. He is somebody who I expect to be a centrist on the Court, and I think we will all be proud of him, regardless of our race, our creed, our sex, or our national origin. He is the type of person that I think the best aspects of America produce.

Clarence Thomas is a fine fellow. He is a very, very bright man. He has done a very good job in all three branches of Government and in State government as well. He has had a wide variety of experience for his 43 years. I think we ought to be very proud that somebody could come from the poverty, lack of opportunity, and the deprivation he has, to now be nominated by the President of the United States to the Supreme Court of the United States of America. I know that he will serve well.

I would prefer that we keep the debate on higher levels because I really believe, yes, you can criticize Clarence Thomas for one view or another. But, overall, you are going to find a very fine man here who will be a terrific Justice on the Supreme Court.

Mr. President, I look forward to the confirmation proceedings, and I hope that they go well for Judge Thomas. He is a worthy nominee.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Idaho [Mr. CRAIG].

NOMINATION OF CLARENCE THOMAS

Mr. CRAIG. Mr. President, let me associate myself with the remarks of my colleague from Utah as they relate to the nomination of Judge Thomas to the U.S. Supreme Court. I am going to watch this man with great fascination over the course of the next several months as the issues that will build around him begin to take root.

I hope that we can vacate the processes that have begun to appear in this body when we would choose to play what I call item politics with the appointment of an individual when we should be looking at his or her scholarship that they will bring to the judicial arm of our Government, as has been historically the case with the Senate, and so I welcome the remarks of my colleague from Utah and wish to associate myself with them.

THE CRIME BILL

Mr. CRAIG. Mr. President, I would like to begin again to discuss, as we will now for the balance of several days of this week, S. 1241, or the crime bill that we concluded with prior to the July 4 recess.

Some of my colleagues have suggested on this floor that any crime bill is better than no crime bill at all.

Our President has spoken loudly in behalf of the need for adjustments in the criminal justice code of this country—that amendments were clearly necessary—and set forth early this year with the proposal and has since that time correctly on occasion jabbed us appropriately on the backside for failing to respond in a timely fashion as we began in the weeks prior to the July 4 recess.

So let me for a short time bring up to date what we have done. We have passed habeas corpus reforms that will make sure justice is done once a criminal is in jail. However, we failed to pass exclusionary rule reforms to help the police and the courts put criminals in jail.

Mr. President, we passed tough criminal penalties that will help deter gun-related crimes. However, we have created a whole new range of victimless paperwork violations to burden law-abiding gun owners and distract law enforcement officials from the real business of fighting crime.

We have passed capital punishment reforms to strike at big-business drug operators and murderers in the District of Columbia. However, we have created new obstacles to make it harder for law-abiding citizens to obtain firearms to protect themselves, their families, and their property.

I do not agree at all times with our President, but I watched as this administration presented to the Congress his version of an anticrime package that was carefully crafted with targeted reforms designed to help—not to hinder—law enforcement. I would suggest to you that is not what the Senate is about at this moment.

We will be taking up additional amendments starting this afternoon, but none will touch the items that I have already mentioned. That would lead me to wonder, as I think the public should wonder at this moment, how much poison are we expected to swallow, Mr. President, in order that we obtain for our public a few drops of the medicine, the reform that is necessary? I believe that is the question at this time.

I yield the remainder of my time.

MAUREEN ORTH IN VANITY FAIR

Mr. MOYNIHAN. Mr. President, sometimes a Yankee can find out more than a British subject. As proof, I cite Maureen Orth's absorbing piece about a recent Prime Minister in this month's issue of Vanity Fair. Fleet Street could do no better; indeed, not half so well. The former Queen's first minister reveals things in this piece that all of my colleagues will benefit from reading.

Mr. President, I ask that the text of Maureen Orth's insightful artiole be entered in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MAGGIE'S BIG PROBLEM

For Margaret Thatcher, it was a throwback to the glory days. Here she was in the White House private quarters, reveling in a lavish dinner party in her honor, basking in the golden glow of twenty-four-inch tapers, gazing out over the perfect pink and fuchsia roses floating in crystal bowls, the centerpieces on six tables for ten. Only hours earlier, in the East Room of the White House, George Bush had awarded her the Presidential Medal of Freedom, America's highest civilian honor. He had praised "the greengrocer's daughter who shaped a nation to her will," and concluded, "Prime Minister, there will always be an England, but there can never be another Margaret Thatcher." She had raced from the exquisite high up to "the Queen's Bedroom" to change into a long black pleated skirt and brilliant red-and-black brocade jacket for cocktails. And now America's most powerful leaders were getting up to pay her homage. It was as if the colonies had not yet heard the news of her unceremonious sacking as prime minister last November by the members of her own Conservative Party. Barbara Bush rose to toast the new baronet, Sir Denis Thatcher. "They broke the mold when they made you, Denis. . . . As the Spouse of a powerful leader, you do it better than anyone."

Sir Denis graciously thanked his hosts and quoted Mark Antony "upon entering Cleopatra's bedroom: I did not come here to talk."

The evening was, quite simply, divine. Former secretary of state George Shultz gave the former prime minister advice on agents for her memoirs; she confessed to being overwhelmed "by my paper." Her entrepreneurial and controversial son, Mark, let it be known to that other feisty entrepreneur seated next to him, the flame-haired Georgette Mosbacher, that he had made millions in ths home-burglar-alarm business. Mark's blonde Texas wife, Diane, startled some with what appeared to be a try at a British accent. But no matter. Margaret Thatcher was in the inner sanctum of power, surrounded by old chums from summits and Star Wars, there only to administer her massive doses of adulation. Naturally, the lady who had ruled Britain for the last eleven and a half years gave as good as she got, extolling America as "a can-do, will-do society," and she heaped praise upon early Americans as model social Darwinists for freedom: "self-selected . . . there were no subsidies here."

Then suddenly the spell was broken. One of the heroes of the day, Secretary of Defense Dick Cheney, the unflappable hand that urged boldness in launching and guiding Desert Storm, actually uttered the unspoken name: John Major. It was inadvertent yet totally appropriate to invoke the leader of our greatest Gulf ally, but how could he? So what if the new prime minister was Mrs. Thatcher's handpicked choice? She gave no indication of distress, of course, but that mention jolted more than few to focus on the ghastly fate that had befallen her only a few months before. Remarked one guest, "It was as if he had spilled something dirty on the tablecloth."

Even when life was beautiful now it was cruel. Exceedingly so. As usual, Mrs. Thatcher's son, Mark, was part of the problem. Now, while acting as her personal manager as she planned a new career in international relatione, he was facing a fire storm of criticism from her friends and former advisers that would erupt before long in a *Sunday Times* of London headline: "MARK IS WRECKING YOUR LIFE."

To add insult to injury, while Margaret Thatcher was polishing off her ohocolate mint souffle with President Bush, and peering across the roses to British golfer Nick Faldo, and even at the very moment when the president was saying that "she defined the essence of the United Kingdom," one of the safest Conservative seats in Britain—Ribble Valley—was going down to defeat in a striking by-election upset. And it was all being blamed on Margaret Thatcher and her legacy, the hated poll tax.

Let the longest-serving British prime minister in this century eat cake in America. At home Margaret Thatcher was eating crow.

"The pattern of my life was fractured," Mrs. Thatcher said the next day in the residence of the British ambassador, referring to her surprise resignation and removal from office. Dressed in a crisp, spring suit and her ubiquitous pearls, she plumped all the pillows on the sofa in the decorous drawing room, then sat down and balanced a porcelain teacup in the palm of her graceful hand. She chose her words carefully: "It's like throwing a pane of glass with a complicated map upon it on the floor," she said, "and all habits and thoughts and actions that went with it and the staff that went with it. . . . You threw it on the floor and it shattered." And the pieces? Margaret Thatcher's eyes blazed. "You couldn't pick up those pieces."

Thatcher also dropped by the United Nations and had a "very lively ding-dong" about the Kurds and the Gulf with Javier Pérez de Céllar and other U.N. heavies.

"She's invigorated, in very good form," says John O'Sullivan, but "she wishes she were in office." And yet, he says, "when she was in power there were always constraints—she couldn't develop a positive agenda. With the reception she received from that Washington speech, she realized she could be this new world figure—a female Kissinger," he enthuses. "There are still remnants of official caution, but I could see her shaking it off. In another six months she'll be unrecognizable. She'll get more outspoken."

That's just what many Conservatives in Britain fear most. Already Major's government has begun to dismantle the poll tax and increase child benefits. That old consensus is rearing its equitable head. For Margaret Thatcher that's roughly the equivalent of making Jesse Jackson the head of the Ku Klux Klan. Already, it is said, she has taken to calling Major's government "the B team."

Reports are now circulating that, in addition to a visit with Gorbachev in May, she will make a triumphant appearance—as a sort of Britannia-on-a-chariot symbol—at next year's Republican convention. "There's no shortage of people who would love to entertain her," says her close friend and former minister Cecil Parkinson. "But that's not a career, is it?"

"She's going through a period of enormous boredom." says Lord Hesketh. Nevertheless, royalists like Hesketh maintain, one must never count Margaret Thatcher out. "She was destroyed by the poll tax and her views on Europe. The chattering classes—the media, the dons, the Pinters—they all hate her, they loathe her. They are unable to have serious thoughts about what she's done, what she's achieved. They're absolutely blinded by their hatred. Because they don't like her they say she's gone. Exit, stage right. That's a great advantage to her."

"If she aspires to be an influence in British politics, and I think she does," says Robert McFarlane, "there is a need for a pause. If she'll just tap her foot for a while, they'll come her way. They'll realize what a giant she is."

"My role now is to go round the world saying, propounding, what I believe in, and to help those reaching out to democracy," Mrs. Thatcher declares. In the U.S., she's already got millions on her side. Deep in Orange County, the denizens are still talking about the penetrating speech they recently heard from her. "After all," said one matron, "she is the most powerful woman who ever lived."

For Margaret Thatcher, at least there'll always be an America.

REMEMBERING JOHN FRANKE: A LIFETIME DEDICATED TO PUBLIC SERVICE

Mr. DOLE. Mr. President, as U.S. Senators, we often have the opportunity to rise to offer kind words or good news about the outstanding people of our State. Today, however, I rise to pay respect to a man who will be missed by all in Kansas. John Franke, Jr. passed away July 3, 1991. John dedicated his life to making a difference for his community, his State and his country. He brought a special brand of enthusiasm and dedication to his work.

John and his wife, Midge, were some of my earliest supporters, and I will never forget their loyalty and friendship. They were always there when I needed them. When I first ran for the U.S. Senate in 1968, they opened up their home and their hearts to help, introducing me to their friends and to Johnson County.

John started his career in local government in Merriam, KS. He first served on the Merriam City Council from 1965–70 and was then elected mayor in 1971–72. He served as a Johnson County Commissioner from 1973–81.

In 1981, John was appointed regional director of the Environmental Protection Agency for Region VII in Kansas City. He and Midge moved to Washington, DC, where he was appointed Deputy Assistant Secretary for Administration for the U.S. Department of Agriculture in 1982 and subsequently as an Assistant Secretary from 1983–89.

Franks was appointed in 1989 by President Bush as Director of the Federal Quality Institute. He also served as Vice Chairman of the President's Council on Management Improvement and as Chairman of its Government Operations Committee.

Though John came to Washington, DC, he kept strong roots in Kansas. No one loved Kansas more than John Franke.

He will especially be remembered by his family, his wife, Midge, his three sons, Michael, John, and Robert, his father John Franke, Sr., and a host of friends and colleagues throughout the Nation.

REGARDING VOTES ON THE CRIME BILL ON MONDAY, JULY 8

• Mr. MURKOWSKI. Mr. President, I regret to inform my colleagues that I will be unable to participate in votes occurring in the Senate on Monday July 8, 1991. My absence is necessitated because I will be with the Secretary of Energy, Adm. James D. Watkins, in my State of Alaska.

Secretary Watkins is traveling in Alaska, at my invitation, to meet with community, business and State government leaders, and to view firsthand the oil exploration and production initiatives that form the cornerstone of the President's national energy strategy. In addition, the Secretary's trip offers Alaskans the opportunity to discuss with the Secretary the many issues of national importance that are currently pending before the Department of Energy.

Mr. President, let the record reflect that had I been present I would have voted nay on the Biden motion to table the Rudman amendment to the crime bill.•

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,305th day that Terry Anderson has been held captive in Lebanon.

THE CLARENCE THOMAS NOMINATION

Mr. DANFORTH. Mr. President, 1 week ago today, while attending a meeting with the mayor and the city council in St. Joseph, MO, I received word that there was a phone call from the President in Kennebunkport. By the time I got to the phone I was told that the President had already started the press conference, at which he announced that Judge Clarence Thomas of the U.S. Court of Appeals for the District of Columbia was going to be nominated to be a Justice on the Supreme Court of the United States. I can say that very seldom in my life has a more exciting event happened to me. It was a tremendous personal thrill to get this word from the administration because my own experience with Clarence Thomas goes back some 17 years.

Seventeen years ago, when Judge Thomas was a third-year law student at Yale law school, I interviewed him for a job in my office when I was attorney general of Missouri. I remember being very impressed with him at that time and I did offer him a job in the attorney general's office. He accepted the job offer and he came to Jefferson City and he worked with me for 2 years or so.

Then, after I came to the Senate in the late 1970's, once again I asked Clarence Thomas to come to work for me and he came to Washington. At that time he had been a member of the legal staff at Monsanto Co., headquartered in St. Louis. He left his job in the private sector and he came to work for me here in Washington as a legislative assistant.

So I have twice been in the position of employing Clarence Thomas. Twice in two different capacities he has worked for me. And I have kept track of him ever since. I have seen him several times every year. I have had a number of opportunities to speak with him and find out what is going on in his life in the various important jobs he has had since he left my employment back around 1980 or 1981 or so.

I know Clarence Thomas very well, and because of my personal knowledge of him, I was particularly excited—thrilled, really—to receive word from the President that Clarence Thomas would be nominated to the Supreme Court of the United States.

Mr. President, I think Clarence Thomas brings to the Supreme Court a very valuable perspective. I know there has been a lot of comment that maybe this is some quota program on the part of the President. I cannot put myself in the mind of President Bush but I can say this: That I believe that in the Supreme Court of the United States it is

important for the Justices to represent a breadth of experience. I do not think that in the Supreme Court we want simply breathing brains, disembodied minds who, in computer-like fashion, apply the precedents to a particular case.

A Justice's reading of the law is bound to be read through the perspective, the glasses of a lifetime of experience and Clarence Thomas' experience in life is unusual, particularly in the Supreme Court. A person who was raised in poverty, a person who did not know indoor plumbing until he was 7 years old, a person raised by his grandparents who were illiterate, who was taught the value of hard work, who was put through the Catholic schools in Savannah, GA, and eventually on to Holy Cross and then Yale Law School.

Clarence Thomas is the best Clarence Thomas that he can possibly be. He has made the most of what he was given in life. And I think that that is a valuable perspective to bring to the Supreme Court of the United States.

Many people have speculated as to what kind of justice Judge Thomas would be. Many people have indicated that in the confirmation proceedings they plan to try to find out how he would vote on this issue or that. President Bush has stated that he did not ask Judge Thomas to predetermine how he would hold in any particular case. And I think that it would be improper to do so. I think that it is improper to try to have a marked Justice on the Supreme Court of the United States.

But I can say from having known this man for 17 years, that if anyone thinks that Clarence Thomas is absolutely predictable, if anyone thinks that Clarence Thomas is a predetermined vote on any particular issue, that individual does not know Clarence Thomas. The President said at Kennebunkport, ME, that Clarence Thomas is fiercely independent. He is one of the most independent people I have ever known. He calls them as he sees them, and that was certainly true when he worked for me, both in the attorney general's office and here in my Senate office in Washington.

He was never a person who would be pigeonholed into any particular category, and I believe that on the Supreme Court of the United States, he would be that kind of Justice. He would call them as he sees them. His issues would not be predetermined. He would not attempt to shove his own political philosophy into any particular case which he was deciding. But he would be a person who would view the law through the window of his own time experience. He is a person and would be a Justice who would have great empathy for the ordinary person. In many ways, Mr. Prssident, Clarence Thomas is the people's nominee for the Supreme Court of the United States.

I have told Judge Thomas that I would do absolutely everything I can to try to assure his confirmation by the Senate, and I plan to do that, and maybe the best thing I can do is maintain a low visibility. I do not know. Whatever it takes I will do for Clarence Thomas. I believe in this person as a human being, I believe in the excellence of his ability, and I believe he would make a splendid member of the Supreme Court.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. AKAKA). Morning business is closed.

VIOLENT CRIME CONTROL ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 1241. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1241) to control and reduce violent crime.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Under the previous order, the Senator from New Hampshire [Mr. RUDMAN] is recognized to offer an amendment relative to police, on which there shall be 1 hour of debate, equally divided in the usual form.

The Senator from New Hampshire.

Mr. RUDMAN. Mr. President, let me state what I believe to be the parliamentary situation. It is my understanding that there will be 1 hour equally divided between the distinguished chairman of the committee, Senator BIDEN, and myself. At the conclusion of that, there will be a motion to table. Then the amendment will be laid aside, and other business will take place. At 7 p.m. this evening there will be a vote on the Biden motion to table the Rudman amendment.

Do I state that corectly?

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 516

(Purpose: To provide authorizations to local law enforcement personnel to combat drugs and crime)

Mr. RUDMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. RUDMAN] proposes an amendment numbered 516.

Mr. RUDMAN. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 8, after line 22, insert the following:

"SEC. 104. GRANTS FOR STATE AND LOCAL LAW ENFORCEMENT.

(a) FINDINGS.—Congress finds that—

(1) State and local police officers are on the front lines of the war against drug-related and other violent crimes;

(2) State and local police officers are directly knowledgeable of the particular problems of crime in their districts, and of the way to best address these problems; and

(3) the most effective way to combat drug-related and other violent crime in the streets is to increase the number of law enforcement personnel operating at the state and local levels of government.

(b) GRANTS.—The Attorney General, acting through the Director of the Bureau of Justice Assistance, is authorized to make grants to State and local law enforcement agencies for the purpose of combatting drug-rslated and other violent crimes. Such grants must be used to supplement and not supplant existing resources. Grants may be awarded only for direct personnel coste associated with employing law enforcement officers.

(c) ALLOCATION.—Of the total amounts appropriated for this section, there shall be allocated to each State and local unit of government an amount which bears the same proportion to the total amount appropriated as the the amount of enforcement officers employed in such state or local unit of government as of June 1, 1991, bears to the total number of law enforcement officers employed in the United States as of June 1, 1991.

(d) DEFINITIONS.—For the purpose of this section—

(1) the term "law enforcement agency" means any agency of the District of Columbia, any of the several states, or unit of general local government, including a county, township, city or political subdivision thereof, which employs law enforcement officers, and has as its primary mission law enforcement; and

(2) the term "law enforcement officer" mean any officer of the District of Columbia, any of the several states, or unit of general local government, including a county, township, city or political subdivision thereof, who is empowered by law to conduct investigations of, or make arrests because of, offenses against the United States, the District of Columbia, a state, or a unit of general local government.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $2,206,500,000 for fiscal year 1992 and such sums as are necessary for fiscal year 1993, 1994, and 1995 to carry out this section."

On page 78, strike lines 1 through 24.

On page 86, strike line 3 and all that follows through page 114, line 10.

On page 122, strike line 3 and all that follows through page 124, line 13.

On page 158, strike line 20 and all that follows through page 167, line 8.

On page 168, strike line 18 and all that follows through page 175, line 11.

On page 178, strike lines 10 through 23.

On page 180, strike lines 5 through 15.

On page 182, strike line 1 and all that follows through page 185, line 4.

On page 187, strike line 1 and all that follows through page 192, line 12.

On page 210, strike line 12 and all that follows through page 220, line 12.

Mr. RUDMAN. Mr. President, I ask unanimous consent that Senator COCHRAN of Mississippi be added as a cosponsor of this amendment.

gaged in the Defense and Space Talks for six years and remain committed to their future.

V

The United States continues to offer a mechanism, the U.S. Defense and Space Treaty, to permit deployment of defenses beyond the ABM Treaty following three years discussion of specific measures for implementing a cooperative transition. Such a process of negotiation and discussion of concrete measures is far preferable to withdrawal from the ABM Treaty under the supreme interests provision found in Article XV of that Treaty. The U.S. approach is measured, reasonable and appropriate.

We also understand full well that the negotiated cooperative transition we seek cannot be built in a vacuum but requires a sound foundation of trust. Therefore, another U.S. approach in the Defense and Space Talks is ensuring predictability in the development of the U.S.-Soviet strategic relationship which has up to now been characterized by secrecy. In contrast, openness makes the strategic relationship predictable, averting miscalculation and technological surprise, and thus is stabilizing.

To encourage openness, the United States has proposed a number of predictability measures designed to create a better understanding of strategic ballistic missile defense activities as early as the research stage—years before the appearance of advanced defenses in the field. These U.S. measures include annual exchanges of data, meetings of experts, briefings, visits to laboratories, observations of tests, and ABM test satellite notifications.

As a demonstration of the U.S. approach and commitment to openness, at the Wyoming Ministerial in September 1989, Secretary of State Baker invited a group of Soviet experts to visit two U.S. laboratories conducting SDI research. In December 1989, ten Soviet experts visited the Alpha Chemical Laser at the TRW facility at San Juan Capistrano, California, and the BEAR Neutral Particle Beam Experiment at the Los Alamos National Laboratory, New Mexico. The Soviet guests saw hardware up close and had an opportunity to ask questions of U.S. scientists conducting the research.

To continue the momentum, Secretary Baker took further initiatives. In the spring of 1990, the United States proposed that the U.S. and Soviet Union conclude a free-standing executive agreement on these matters. Later in 1990, the U.S. proposed pilot implementation of U.S. predictability measures—a "trial run." And last Fall, the U.S. proposed that the two sides conduct "dual pilot implementation"—the United States would demonstrate its proposed predictability measures, and the Soviet Union would demonstrate its measures.

The United States remains committed to reciprocal openness in this area which we believe would be inherently stabilizing, consistent with the developing trends in U.S.-Soviet relations. We also believe that early conclusion of a free-standing predictability measures agreement would afford us the opportunity to build greater trust upon which we could construct even greater successes in the Defense and Space Talks.

VI

With the proliferation of ballistic missile technology growing near Soviet Borders, and with our GPALS plan, the United States believes Soviet attitudes should evolve to permit defenses against mutual concerns. Although to date there has been no shift in the official Soviet position on the deployment of defenses beyond the narrow limits of the ABM Treaty, we continue to see evidence of an internal Soviet discussion over the role of ballistic missile defenses. In addition, missile defense is more consistent with the new Soviet emphasis on "defensive doctrine." Thus, incentives exist for the Soviets to join with us to explore constructive measures to counter emerging threats.

The changes in the international environment, the lessons learned from the Gulf War, the improvement in U.S.-Soviet relations, and the shift to a defensive doctrine in the Soviet Union all should encourage our Soviet colleagues to consider relaxation of ABM Treaty constraints to meet mutual concerns.

There is considerable reason for optimism in the Defense and Space Talks. Here in Geneva, following the signing of the START Treaty, Presidents Bush and Gorbachev, in their June 1990 Washington Joint Summit Statement, committed the U.S. and USSR to seek an "appropriate relationship between strategic offenses and defenses." This is a good sign. Soon, the United States and the Soviet Union will begin to construct this new regime that could permit greater reliance on defenses. This commitment should enable the sides to build upon improving relations and achieve success in future Defense and Space Talks to deal cooperatively with the evolving international environment.

I hope to report great success to you the next time we meet. Thank you.

NOMINATION OF CLARENCE THOMAS

Mr. DOLE. Mr. President, there will be a lot of attention focused on the nomination of Clarence Thomas to be a Justice of the U.S. Supreme Court.

I had met Judge Thomas before, but again on yesterday many of us had an opportunity to have a brief meeting with the nominee and discuss strategy, if you will, or at least discuss how to proceed. I understand he will be meeting this morning with the distinguished chairman of the Judiciary Committee and the distinguished ranking Republican member of that committee, Senator THURMOND.

Mr. President, as the grandson of a sharecropper in the segregated South, the young Clarence Thomas was constantly reminded that the American dream was a white man's dream—never to be realized, never to be shared, by those Americans whose skin happened to be a different color.

Despite a childhood of poverty and Jim Crow, Clarence Thomas rejected the easy path of resignation, relentlessly pursuing—instead—the more difficult road of hard work and a commitment to excellence.

As an assistant attorney general for the State of Missouri, as Chairman of the Equal Employment Opportunity Commission, and, now, as a distinguished member of the D.C. Court of Appeals, Clarence Thomas has indeed compiled an impressive record of public service achievement.

This record speaks for itself, and in fact, has been praised by none other than the Washington Post, which has cited Clarence Thomas' "quiet but persistent leadership" of the EEOC.

DON'T POLITICIZE THE CONFIRMATION PROCESS

Unfortunately, Mr. President, some of the politically correct litmus-testers here in Washington want to deny the fulfillment of Clarence Thomas' all-American dream, not because he lacks the talent or the drive, but because he is a successful black man who also happens to be a Republican and a conservative.

Before his confirmation hearings even begin, these litmus-testers would expect Judge Thomas to go beyond explanations of judicial or legal philosophy and answer specific questions about specific cases that may come before him as a sitting member of the Supreme Court sometime in the future.

If the answers are not the correct ones, if Judge Thomas does not mark the right box, then he should not be confirmed—or so the reasoning goes.

Needless to say, this litmus-test approach has been rejected by anyone who is serious about maintaining the independence of the Federal judiciary.

As former Chief Justice Warren Burger recently cautioned, and I quote:

> No nominee worthy of confirmation will allow his or her position to become fixed before the issues are fully defined * * * before the Supreme Court with all the nuances that accompany a constitutional case. Presidents and legislators have always had platforms and agendas, but for judges the only agenda should be the Constitution and laws agreeable with the Constitution.

Mr. President, the Senate should heed the former Chief Justice's advice and resist the temptation of transforming Federal judges into politicians.

Federal judges should judge only from the Federal bench.

They should not, and must not, prejudge cases from the bench of a Senate confirmation hearing.

Clarence Thomas understands this, but he also understands real-life people with real-life problems.

He will be a people's Justice, committed to the rule of law, but equally committed to the cause of justice for all Americans.

Mr. President, Clarence Thomas has succeeded in putting Pinpoint, GA, on the map.

And I have no doubt that he will leave his mark on the Supreme Court when confirmed by the U.S. Senate, the sooner, the better.

RESERVATION OF REPUBLICAN LEADER TIME

Mr. DOLE. Mr. President, I reserve the remainder of my time.

The ACTING PRESIDENT pro tempore. Without objection, the leader's time is reserved.

Mr. DOLE. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

these people and in the way of communicating any orders to land and how they might be carried out.

I thank the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi [Mr. COCHRAN].

Mr. COCHRAN. Mr. President, I thank sincerely my distinguished friend from Ohio for his comments and inquiries. His expertise as a pilot and experience in aviation is well known around the world. His observations and comments I think are very helpful in our understanding of some of the practical implications of the law of this kind of regulation that might be issued and implemented.

So I am joining with him in committing myself to the Senate to also follow carefully the writing of these regulations and to consult with others so as we go through this process to be sure that the rights of innocent pilots and others who might have a reason to be flying aircraft in a lawful way, not committing any crime at all, would be taken into account in the writing of the regulations so that those rights will be safeguarded completely. I thank the Senator very much.

Mr. President, to further clarify and explain the amendment, in January of this year, President Bush submitted to the Congress his national drug control strategy for 1991. This is the third such report since the oreation of the Office of National Drug Control Policy in 1988. This report recognizes that "prevention is the only answer in the long run, but in the short run, increased interdiction, international, and law enforcement efforts are necessary" in the continuing battle against illegal drug use.

The amendment I have offered will help meet the goals of the President's strategy. It will give the Coast Guard increased authority in drug interdiction efforts. It will create criminal and civil penalties for refusing to heed Coast Guard instructions to land a plane or to allow the Coast Guard to board a vessel at sea if drug smuggling is suspected. In effect, it will give the Coast Guard authority to use methods of drug interdiction that are currently employed by the Customs Service. My amendment would also allow the Coast Guard to be more involved in coordinating efforts with foreign countries and with international organizations.

Mr. President, while these are not major issues on their surface when compared to amendments on the death penalty or other issues we have debated on this bill, the connection of the illegal drug trade to violent crime is indisputable, and every effort we make to inhibit the illegal distribution of drugs is a step toward reducing violent crime.

A 1989 survey of 23 major cities conducted by the National Institute of Justice found that 73 percent of the men arrested in those cities on robbery charges tested positive for drugs at the time of arrest; the corresponding figure for women was 75 percent. When arrests were made on murder charges in these cities, 57 percent of the men and 46 percent of the women arrested tested positive for drugs. For aggravated assault arrests, 55 percent of the men and 53 percent of the women tested positive for drugs. And on sex offenses, including rape, 44 percent of the men tested positive for the presence of drugs in their system.

Mr. President, these statistics are one indication of the influence of drugs in the commission of violent crime. But where do these drugs come from? One hundred percent of the cocaine supply in the United States is imported from other countries. In 1990, between 375 and 545 metric tons of oocaine came across our borders; 101 tons of that was seized by law enforcement authorities, leaving hundreds of tons of cocaine to infiltrate our society. The estimated value of the cocaine that made it to our streets: $26 to $44 billion.

While we must improve our efforts to reduce the demand for drugs, we must also look to ways to let drug oriminals know that if they pursue their trade, they will be apprehended and held accountable for their actions.

Under the leadership of President Reagan and now President Bush, the United States has developed an expansive web of law enforcement mechanisms designed to impede the invasion of illegal drugs into our country. This amendment will provide one more obstacle to those who might otherwise evade our drug interdiction efforts.

The PRESIDING OFFICER. The Senator from Mississippi retains the floor.

Mr. COCHRAN. Mr. President, I know of no other Senators seeking recognition to speak on the amendment.

May I inquire if there is time remaining under the order?

The PRESIDING OFFICER. There is no time agreement on this particular amendment. Is there additional debate?

If not, the question occurs on amendment 495 offered by the Senator from Mississippi. The question is on agreeing to the amendment of the Senator from Mississippi.

The amendment (No. 495) was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. THURMOND. Mr. President, I ask unanimous consent to speak as if in morning hour.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CLARENCE THOMAS NOMINATION

Mr. THURMOND. Mr. President, I was pleased to meet this morning with President Bush's nominee, Judge Clarence Thomas, who has been chosen to serve as an Associate Justice of the U.S. Supreme Court. I was impressed with his intellect and keen knowledge of the law. He is a dedicated and principled individual who would be an outstanding addition to the Court.

Judge Thomas has an eminent background which I believe will serve him well as an Associate Justice of the Supreme Court. He was born in Pinpoint, GA, on June 23, 1948, and moved to Savannah where he was raised by his grandparents. In his youth, Judge Thomas overcame difficult economic conditions and excelled in his studies. He later attended the Immaculate Conception Seminary for 2 years before transferring to Holy Cross College where he was a member of the Honors Program, graduating in 1971. In 1974, he graduated from Yale Law School, one of our Nation's top schools.

In addition to his impressive academic background, Judge Thomas has practical experience which will be helpful to him in this position. Following law school, Judge Thomas worked for Senator DANFORTH, then the attorney general for the State of Missouri, as an assistant attorney general. He represented the State before the trial courts, appellate courts and the Supreme Court of Missouri on matters ranging from taxation to criminal law. From 1977 to 1979, he worked for the Monsanto Co. handling general corporate matters such as antitrust, contracts, and governmental regulation.

In 1979, he again went to work for Senator DANFORTH as a legislative assistant, responsible for issues relating to energy, environment, Federal lands and public works. President Reagan nominated Judge Thomas in 1981, to the position of Assistant Secretary for Civil Rights for the Department of Education. In 1982, he was nominated by President Reagan to be the Chairman of the U.S. Equal Employment Opportunity Commission where he served before being nominated to the circuit court.

As well, I believe it is worth noting that the Senate overwhelmingly voted to confirm Judge Thomas' nomination to the circuit court.

Mr. President, now that Judge Thomas has been selected to serve as an Associate Justice of the Supreme Court, there are those who would urge his re-

jection based solely on a preconcieved notion of how he would rule on a specific case which may come before the court. I do not believe that it is appropriate to characterize Judge Thomas as an unwavering ideologue who has made up his mind about how he would decide specific cases. To do so is unfair—unfair to Judge Thomas and the American public. Judge Thomas' background indicates that he will be sensitive to those individuals who will have their cases decided by the highest court in this Nation. As well, Judge Thomas is a young man, and once confirmed, will serve for many years on the Supreme Court. His fate should not hinge on any particular issue, when over the years he will rule on hundreds, possibly thousands of issues.

In closing, Judge Thomas acknowledges that he has been a beneficiary of the diligent work of individuals such as Justice Marshall and of others involved in civil rights efforts. I do not believe Judge Thomas will undermine the progress that has been made in this area. To the contrary, I am confident that Judge Thomas is honored to have been nominated to serve in the seat occupied by Justice Marshall. Now that President Bush has stated that he will nominate Judge Thomas, the Judiciary Committee and the full Senate will begin to thoroughly examine his background and experience for this important position. As we proceed with this process, I look forward to a swift, fair, and comprehensive review of his record.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VIOLENT CRIME CONTROL ACT

The Senate continued with the consideration of the bill.

Mr. BIDEN. Mr. President, we have a cloture motion filed, and as of 1 hour and 4 minutes from now it would no longer be in order to file first-degree amendmente to this bill. To accommodate Senators who have interest in filing first-degree amendments and do not have the time to get them in by 1 o'clock, I now ask unanimous consent that the time for filing first-degree amendments be extended until 4 p.m. today.

The PRESIDING OFFICER. Is there objection to the request by the Senator from Delaware? If not, the time for filing first-degree amendments is extended until 4 p.m. today.

RECESS UNTIL 2:15 P.M.

Mr. BIDEN. Mr. President, to bring my colleagues and their staffs up to date Senator THURMOND and I, along with other interested parties sitting in the leadership, believe there is a way to deal with the most contentious amendments remaining. There are over 70 amendments that remain, and I suspect by the time 4 o'clock arrives there may be well above 70 amendments. So we think we have an outline as to how to proceed that would allow us to bring to a conclusion debate on this crime bill today. With the grace of God and the good will of our neighbors, we will make that.

But in order to gain approval of this proposal, the Senator from South Carolina and I have agreed on, we each believe it is appropriate for us to bring this proposal before our respective caucuses, which begin at 12:30.

Notwithstanding the fact we have not proceeded on any amendment for the last 20 minutes to a half-hour and are not likely to proceed on any between now and 2:15, notwithstanding that we will be able to make greater progress on this bill than had we been here voting the last hour and the next 2 hours, Mr. President, I ask—this has been cleared by the leadership—unanimous consent that in order to accommodate the ability of Senator THURMOND and myself to make our case to each of the caucuses, the Senate now stand in recess until 2:15.

There being no objection, at 11:58 a.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. ADAMS].

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak for 5 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF JUDGE CLARENCE THOMAS TO THE U.S. SUPREME COURT

Mr. GRASSLEY. Mr. President, now that the President of the United States has nominated Judge Clarence Thomas to the highest court of our Nation I want to speak about that but more from the standpoint of the Senate's role in the selection of a Supreme Court Justice, now that President Bush has nominated Judge Clarence Thomas for the High Court.

The Constitution gives the President the responsibility for nominating candidates for the Federal judiciary. The Senate role, spelled out in that same clause of article 2, dealing with the powers of the Executive, not the legislative branch, is to "advise and consent" to the nomination.

It is not the Senate's responsibility to second-guess, or substitute its own judgment for that of the President. The Framers envisioned that the Senate's role would be to act as a check against a President who appoints his political cronies to life-tenured judicial positions. In fact, Alexander Hamilton, in the Federalist Papers, wrote that the advise and consent role "would be an excellent check upon a spirit of favoritism in the President * * *."

While the Constitution gives the President the principle role in selecting judges for the Federal courts, including the Supreme Court, our role is to ensure that the candidates have the intellect, integrity, and temperament to serve in that high capacity particularly the high capacity of the Supreme Court. No, we are not here to be a rubber stamp for the President's nominations, but our inquiry should be focussed on the nominee's objective qualifications.

Some of my colleagues have already called for a litmus test on certain issues. But I would remind my colleagues of the deferential role the Senate has played in recent nominations. During the confirmation process for Justice Sandra Day O'Connor in 1981, for example, Senator BIDEN, now the distinguished chairman of the Judiciary Committee, said:

> We are not attempting to determine whether or not the nominee agrees with all of us on each and every pressing social or legal issue of the day.

Senator BIDEN candidly continued:

> If that were the test, no one would pass by [the Judiciary] committee, much less the full Senate.

The senior Senator from Massachusetts [Mr. KENNEDY] during that proceeding was even more direct:

> It is offensive to suggest that a potential Justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential justice must pass the litmus test of any single-issue interest group.

And Senator METZENBAUM, during the floor debate preceding the vote on then-Judge O'Connor, stated:

> I believe there is something basically un-American about saying that a person should or should not be confirmed for the Supreme Court or should or should not be elected to public office based upon somebody's view that they are wrong on one issue.

Mr. President, a nominee cannot and should not answer specific policy questions. A nominee cannot and should not be asked to decide a case until that case, with all of its particular facts, presents itself.

And most importantly, the American people have nothing to fear from a judge who practices judicial restraint.

That approach gives deference to the more democratic branches of Government, our own Congress of the United States, and our own 50 State legislatures. We are elected to make the difficult decisions on matters of broad public policy. And, of course, we are accountable to the people when we take a stand, or if we fail to take a stand. In

regard to that, judges are not in that sort of position.

I want to share some of my observations about the worthy nominee the President has sent to the Senate—Judge Clarence Thomas.

Judge Thomas is not an unfamiliar individual to many of us. We confirmed him for the appellate court here in Washington, DC, a little more than a year ago. Before that, he chaired the Equal Employment Opportunity Commission for some 7 years. He got his professional start with our distinguished colleague Senator DANFORTH, first in the Missouri Attorney General's Office, and then here as a legislative assistant. He came from a poor home, a segregated oommunity, and faced enormous obstacles. But Judge Thomas had what others do not: The support and love of his family, especially his grandfather, and dedicated teachers who instilled in him the importance of education.

Judge Thomas is a role model for all Americans, and in many ways he represents the legacy of Justice Marshall. Justice Marshall led the battle against segregation. Because of his work, Judge Thomas attended some of the finest academic institutions in this Nation and has achieved great heights.

Some will argue that his conservative views put him at odds with Justice Marshall, but Justice Marshall's legacy is also about diversity: No community, black or white, is monolithic. And Justice Marshall's fight for equality for black Americans has to encompass the right of black Americans to have their particular views on matters of public policy. Judge Thomas should not be penalized because he knows minorities can succeed without the liberal designed social-engineering so prevalent in our society.

Mr. President, I will have questions for Judge Thomas when he comes before the Judiciary Committee in September. I will reserve the right to evaluate the nominee in light of all the information that comes before us. But as I said in the previous Judiciary Committee hearing on Judge Thomas, he is a doer who has courageously defied the establishment. Along the way he may have ruffled some feathers, but that is true of anyone who has attained high achievement. He is a man to be respected and admired.

VIOLENT CRIME CONTROL ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who seeks recognition?

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, in a moment, I intend to offer an amendment on behalf of myself and Senators HATCH, BIDEN, D'AMATO, DECONCINI, SPECTER, GRAHAM, and KERRY. To move the process forward, I will now briefly describe the amendment to be offered.

This amendment would use up to $30 million in unexpended money from the Customs Service asset forfeiture fund to support drug treatment programs. If enacted into law, it would make a modest, additional sum of money available to activities that reduce the demands for drugs, and thereby prevent crimes.

This bipartisan proposal does not take a single dollar out of the hand of law enforcement. Under current law, money that the Customs Service does not use for its own purposes reverts to the General Treasury. I believe we can make better use of this money to help fight the war on drugs.

It is appropriate that some assets seized from criminal defendants should be used for drug treatment because treatment reduces crime. Addicts who complete a treatment program are five times less likely to be arrested than those who are not afforded treatment.

In a recent landmark study, the Institute of Medicine concluded that "treatment reduces the drug consumption and other criminal behavior of a substantial number of people."

The need for drug treatment services has never been greater. Treatment is available to only one in eight addicts who need it. Tens of thousands of addicts languish on waiting lists for treatment programs, and many commit crimes to support their addiction while waiting for an opportunity to get help.

In effect, this amendment adds money for the war on drugs and provides that a modest portion of the billion dollars seized each year under the Federal forfeiture laws will be used to prevent crimes through drug treatment.

We have been advised by the Congressional Budget Office that this amendment does not violate the Budget Enforcement Act, and will not count against the budget caps. This is the intent of the sponsors of this amendment.

I ask unanimous consent a copy of the CBO letter be printed in the RECORD after my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. KENNEDY. I am grateful that the managers on both sides have indicated a willingness to accept this amendment, and I will withhold introducing the amendment until the floor manager is present on the floor.

I yield the floor.

EXHIBIT 1

CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 8, 1991.

HON. EDWARD KENNEDY,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: At your request, the Congressional Budget Office has reviewed a proposed amendment to S. 1241, the Violent Crime Control Act of 1991. This amendment would require that unobligated amounts in excess of $15 million remaining in the Customs Forfeiture Fund at the end of each fiscal year be transferred to the Department of Health and Human Services (HHS) and expended for drug treatment grants. Currently, such amounts are deposited into the general fund.

Based on information from the United States Customs Service, it appears that between $29 million and $30 million in the Customs Forfeiture Fund will remain unobligated at the end of fiscal year 1991, of which $14 million to $15 million will be transferred to the general fund. Under the proposed amendment, this $14 million to $15 million would instead be transferred to HHS and would result in additional direct spending of $14 million to $15 million in fiscal years 1992-1994.

Because scorekeeping estimates have to be consistent with the baseline projections, however, CBO would estimate that the proposed amendment would have no budgetary impact in any fiscal year and that there would be no pay-as-you-go scoring under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. CBO has previously estimated its baseline projections that the full amounts deposited into the Customs Forefeiture Fund in each of the fiscal years 1991-1996 will be obligated, and thus that there will be no unobligated amounts available for deposit into the general fund. If there were unobligated funds in excess of $15 million that were transferred to HHS under this amendment, it would be recorded as a technical reestimate and would not trigger any pay-as-you-go scoring by CBO. Of course, the Office of Management and Budget makes the ultimate decision on pay-as-you-go scoring for the purpose of determining whether a sequester is necessary in any particular year.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I want to compliment the distinguished Senator from Massachusetts for this amendment. He and I—and I think everybody else in this body—realize that there is not enough money being spent on rehabilitation of drug users and drug abusers.

We are doing a lot in this crime bill to try to interdict the flow of drugs and to try to use effective law enforcement methods to bring down the force of the law as hard as we can on drug traffickers, kingpins, and other drug possessors.

The fact of the matter is that we are never going to solve this problem if all we do is look at the supply side of the equation. So, the distinguished Senator from Massachusetts and myself are filing this amendment to make sure that we look at the demand side as well. We must look at the rehabilitation of people who suffer as a result of drug addiction or drug overuse.

These asset forfeiture funds, thus far, have been used for other purposes. But

who offer the prospect of better Sino-American relations. By the end of this decade, China will no longer be ruled by its eight octogenarians led by Deng Xiaoping. These leaders, who still remember vividly the Chinese civil war and the cultural revolution, are obsessed with the fear of disorder. Deng, for example, apparently equates the student idealists of 1989 with the violent bands of young people who wrought havoc across China during the cultural revolution, forcing Deng to flee, and leaving his son paralyzed.

The next generation of Chinese leadership will almost certainly be less paranoid about the outside world and less sensitive to any perceived slight to Chinese sovereignty. For the present rulers, the carving out of Western and Japanese economic spheres in China and the stationing of military expeditionary forces there during the early 20th century were determinative events of their childhoods. The Japanese invasion, one of the cruelest of history, consumed their youth. Even as sophisticated a Chinese leader as former Premier Chou En-lai once told Henry Kissinger that Japan, the Soviet Union, and the United States still had as their ultimate aim the division of China.

Engagement with China will also enable us to support its burgeoning economic reforms, and thereby induce political reforms. The economic reforms, which were started in late 1978 by Deng, have resulted in the privatization of agriculture, the establishment of thousands of market-based industries, particularly in the southern coastal provinces, and the sending of tens of thousands of students to learn science and technology in the west. Nearly half of China's economy is now run along free market lines.

The hardest-line element of the Chinese leadership, led by Chen Yun, opposes these economic reforms. Following Tiananmen Square, this faction tried to roll back the reforms and increase the central government's economic authority and tax revenues. But it was blocked by a coalition of more moderate Beijing and provincial officials, who has vested interests in the reforms and knew they were necessary for China to feed and employ its ever-growing population—about 17 million additional people a year. They appear to have won the struggle over economic reforms. Even the hard-line Premier, Li Peng, promised at the last Peoples' Congress that the reforms would be extended to the poorer interior provinces.

If the interior provinces are being drawn toward the coast, the coastal provinces, China's economic and population heartland, are being drawn toward the outside world. The southern provinces of Guangdong, including the city of Guangzhou, better known in the West as Canton, are already tightly linked with the Hong Kong-Macao region. The province of Fujian is becoming enmeshed with Taiwan. South Korea's influence is beginning to extend to the Shandong Peninsula. The Japanese economy is also reaching into China's provinces. In all these areas, local leaders are becoming more assertive and less willing to accept Beijing's economic dictates.

As events in South Korea and Taiwan have shown, we should not underestimate the political changes that may evolve out of economic reforms. Cracks are already appearing in the totalitarian structure of Communist China. In contrast with Beijing, provincial leaders were relatively restrained in dealing with the unrest of 1989. Many Chinese dissidents were able to make their way to freedom in Hong Kong with the help of scores of their sympathetic countrymen. The Communist state's propaganda is increasingly ignored, even in the countryside. Western dress and goods are pervasive; a Western education is cherished. All of these changes are revolutionary and suggest that the old Communist China is slowing dying.

We must hope that China's hard-line leaders see that the currents of history are working against a totalitarian state. Unlike a rudimentary, industrial economy, a modern state is too complex to be run by a small group of central planners; it demands decentralization and individual initiative. A modern economy requires extensive outside contracts for educating its young, promoting trade, and obtaining information. A modern state needs a modicum of political support from its educated citizens if they are to work in a productive manner. A modern China needs reform.

Chen Yun and his hard-line faction are reportedly still opposed to economic reform and remain deeply suspicious of the current economic contracts with capitalist Asia and the West. They managed to overturn several plans to release Fang Lizhi, the Chinese astrophysicist and spokesman for political reform at Tiananmen Square, who was a refugee in the United States Embassy for months. The Chen Yun faction argued that China would still face a series of endless demands even if Fang were released, why give into the Americans at all. They believe that the West intends to smother the Communist regime in a web of friendly contacts. While our current policy may not be that coherent, its ultimate design is, indeed, to undermine the Communist regime in such a manner.

Mr. President, the extensive trade China now has with the United States gives us an important tool to use in fostering economic and political reform. The merchants and entrepreneurs of the coastal provinces, and the students and intellectuals of the cities are China's hope and ours. We must use our economic leverage to help them and to limit Chinese arms proliferation and increase Chinese human rights. We must continue to use that leverage until the Beijing spring that existed before the cruel night in Tiananmen Square returns fully and finally to China's capital.

RACE AND CIVIL RIGHTS

Mr. BRADLEY. Mr. President, this is an open letter to President Bush. I hope he will hear it and I hope the American people will listen, too. I hope this letter will put the issue of race relations in a broader context than simply the Supreme Court nomination of Clarence Thomas. I offer this letter recognizing that when a black or white American speaks about race one necessarily speaks for someone else of a different race. That is awkward and subject to misinterpretation. But silence is worse.

DEAR MR. PRESIDENT: In 1988 you used the Willie Horton ad to divide white and black voters and appeal to fear. Now, based on your remarks about the 1991 Civil Rights Bill, you have begun to do the same thing again. Mr. President, we implore you—don't go down this path again. It's not good for the country. We can do better.

Racial tension is too dangerous to exploit and too important to ignore. America yearns for straight talk about race, but instead we get code words and a grasping after an early advantage in the 1992 election. Continued progress in race relations requires moral leadership and a clear sighted understanding of our national self-interest. And that must start with our President.

There is a place and a time for politics. The Willie Horton ad in your 1988 campaign will be played and analyzed by political pundits for years to come.

There is a place and time for leadership. The place for leadership is here—for our people, uncertain and divided once again on the issue of race. And the time for leadership is now.

So, Mr. President, tell us how you have worked through the issue of race in your own life. I don't mean speechwriter abstractions about equality or liberty but your own life experiences. When did you realize there was a difference between the lives of black people and the lives of white people in America? Where did you ever experience or see discrimination? How did you feel? What did you do? What images remain in your memory? Tell us more about how you grappled with the moral imperatives embodied in race relations and how you clarified the moral ambiguities that necessarily are a part of the attitude of every American who has given it any thought—any thought at all.

Do you believe silence will muffle the gunshots of rising racial violence in our cities? Do you believe that brotherhood will be destroyed by candor about the obstacles to its realization? Do you believe ignoring the division between the races will heal it? If you truly want it healed, why don't you spend some of the political capital represented by your 70 percent approval ratings and try to move our glacial collective humanity one inch forward.

Mr. President, you say you're against discrimination. Why not make a morally unambiguous statement and then back it up

with action? At West Point you said you "will strike at discrimination wherever it exists." How will you do that and when? Why not try to change the racist attitudes of some Americans—even if they voted for you—so that all Americans can realize our ideals?

Mr. President, if these concerns are wrong, please dispel them. Please explain the following basis for our doubt.

DOUBT ONE—YOUR RECORD

Back in 1964 you ran for the U.S. Senate and you opposed the Civil Rights Act of that year. Why?

I remember that summer. I was a student intern in Washington, D.C., between my junior and senior years in college and I was in this Senate chamber that hot summer night when the bill passed. I remember that roll call. I remember thinking, "America is a better place because of this bill. All Americans—white or black—are better off." I remember the presidential election that summer too, when Senator Goldwater made the Civil Rights Act an issue in his campaign. I came to Washington that summer as a Republican. I left as a Democrat.

Why did you oppose that bill? Why did you say that the 1964 Civil Rights Act "violates the constitutional rights of all people?" Remember how America functioned in many parts of the country before it passed? Separate restrooms and drinking fountains for black and white, blacks turned away from hotels, restaurants, movies. Did you believe that black Americans should eat at the kitchen steps of restaurants, not in the dining room? Whose constitutional rights were being violatsd there?

Were you just opposing the Civil Rights Bill for political purposes? Were you just using race to get votes?

Did you ever change your mind and regret your opposition to the Civil Rights Act? If so, when? Did you ever express your regret publicly? What is your regret?

When you say today that you're against discrimination, I don't know what you mean because you have never repudiated or explained your past opposition to the most basic widening of opportunity for black Americans in the 20th century, the Civil Rights Act of 1964.

It souuds like you're trying to have it both ways—lip service to equality and political maneuvering against it.

What does you record mean? What have you stood for?

DOUBT TWO—ECONOMIC REALITY

Mr. President, over the last 11 years of Republican rule the poor and the middle class in America have not fared well. The average middle income family earned $31,000 in 1977 and $31,000 in 1990. No improvement. During the same time period, the richest 1% of American families went from earning $280,000 in 1977 to $549,000 in 1990. Now, how could that have happened? How could the majority of voters have supported governments whose primary achievement was to make the rich richer? The answer lies in the strategy and tactics of recent political campaigns.

Just as middle class America began to see their economic interests clearly and to come home to the Democratic party, Republicans interjected race into campaigns, to play on new fears and old prejudices, to drive a wedge through the middle class, to pry off a large enough portion to win.

Mr. President, most Americans recognize that in economic policy Republicans usually try to rsward the rich, and Democrats usually do not. I accept that as part of the lore and debate and rhythm of American politics. What I cannot accept, because it eats at the core of our society, is inflaming racial tension to perpetuate power and then using that power to reward the rich and ignore the poor. It is a reasonable argument over means to say more for the wealthy is a price we pay to "lift all boats." It is a cynical manipulation to send messages to white working people that they have more in common with the wealthy than with the black worker next to them on the line, taking the same physical risks and struggling to make ends meet with the same pay.

Mr. President, I detest anyone who uses that tactic—whether it is a Democrat like George Wallace or a Republican like David Duke. The irony is that most of the people who voted for George Wallace or David Duke or George Bush because of race haven't benefited economically from the last decade. Many of them are worse off. Many have lost jobs, health insurance, pension benefits. Many more can't buy a house or pay property taxes or hope to send their child to college. The people who have benefited come from the wealthiest class in America. So, Mr. President, put bluntly, why shouldn't we doubt your commitment to racial justice and fair play when we see who has benefited most from the power that has been acquired through sowing the seeds of racial division?

DOUBT THREE—YOUR INCONSISTENT WORDS

We Americans hold a special trust on the issue of race. We fought one of the bloodiest wars in history over it—brother against brother, state against state, American against American. Our communities and our schools and our hearts have been torn by the issue. We have come too far, Mr. President. We do not need to be torn further. Most Americans who have absorbed our history know the wisdom of Zora Neale Hurston's words that, "Race is an explosive on the tongues of men." Race is most especially an explosive on the tongue of the President * * * or his men.

We have come too far. We need to be led not manipulated. We need leadership that will summon the best in us not the worst.

Yet you have tried to turn the Willie Horton code of 1988 into the quotas code of 1992. You have said that's not what you're doing but as you said at West Point, "You can't put a sign on a pig and say it's a horse."

Why do you say one thing with your statement against disorimination and another with your opposition to American businesses working with civil rights groups to get a civil rights bill most Americans could be proud of. Are you sending mixed signals or giving a big wink to a pocket of the electorate?

We measure our leader by what he says and by what he does. If both what he says and what he does are destructive of racial harmony, we must conclude that he wants to destroy racial harmony. If what he says and what he does are different, then what he does is more important. If he says different things at different times that are mutually contradictory, then we conclude he's trying to pull the wool over someone's eyes.

Mr. President, you need to be clearer, so that people on all sides understand where you are, what you believe and how you propose to make your beliefs a reality. Until then, you must understand that an increasing number of Americans will assume your convictions about issues of race and discrimination are no deeper than a water spider's footprint.

DOUBT FOUR—YOUR LEADERSHIP

Racial politics has an unseemly history in America. For only about five decades of the last 220 years have our politicians actively tried to heal racial wounds. Slavery blighted our ideals for nearly a century. Then a burst of hope from 1865 to 1876. Then nearly another century of exploitation and inhumanity including hareh and discriminatory treatment of Hispanics and many other immigrant groups. Then from 1945 to 1980, another burst of hope. Much was accomplished in this last period. But, all of us deep in our hearts know there's more to do.

Demagogues—both white and black—seek to deepen divisions. Misconceptions grow. Fears accelerate. Outlandish egos thrive on the misery of others.

Both races have to learn to speak candidly with each other. By the year 2000, only 57% of people entering the work force will be native born whites. White-Americans have to understand that their children's standard of living is inextricably bound to the future of millions of non-whits children who will pour into the workforce in the next decades. To guide them toward achievement will make America a richer, more successful society. To allow them to self-destruct because of penny-pinching or timidity about straight talk will make America a second rate power. And Black Americans have to believe that acquisition of skills will serve as an entry into society not because they have acquired a veneer of whiteness but because they are able. Blackness doesn't compromise ability nor does ability compromise blackness. Both blacks and whites have to create and celebrate the common ground that binds us together as Americans and human beings.

To do that we must reach out in trust to each other. By ignoring the poverty in our cities, white Americans deny reality as much as black Americans whose sense of group identity often denies the individuality that they themselves know is God's gift to every baby. There is much to say to each other about rage and patience, about opportunity and obligation, about fear and courage, about guilt and honor. The more Americans can see beyond someone's skin to his heart and mind, the easier it will be for us to reveal our true feelings and to admit our failures as well as celebrate our strengths. The more Americans are honest about the level of distrust they hold for each other, the easier it will be to get beyond those feelings and forge a new relationship without racial overtones. Both black and white Americans need to recognize that what's important is not whether the commanding officer is black or white but how good a leader he or she is. That's true in war and it's equally true in peace.

Above all, we need to establish a social order in which individuals of all races assume personal responsibility. In a contest that's fair a chance is all someone needs. In a contest that's falr the gripes and excuses of losers don't carry much weight.

So individual responsibility is essential. And so is facing reality clearly. Crime often causes poverty. Racism exists, and so do horrible living conditions in our cities. To accept any of this as natural or necessary or unchangeable is to insure that it will continue.

The most important voice in that national dialogue is yours, Mr. President. You can set us against each other or you can bring us together. You can reason with us and help us overcome deep-rooted stereotypes or you can speak in mutually contradictory sound bites and leave us at each other's throats. You can

risk being pilloried by demagogues and losing a few points in the polls, or you can simply ignore the issue, using it only for political purposes. You can push the buttons which you think give you an election or you can challenge a nation's moral conscience.

The irony here is that as a Democrat, I am urging the Republican President to do what will serve his own party's longterm political interests. Why do I do it? Because I believe that race-baiting should be banished from politics. Because I believe communicating in code words and symbols to deliver an old shameful message should cease. There should be no more Willie Horton ads. Mr. President, will you promise not to use race again as you so shamelessly did in 1988? If you will not promise your country this, why not?

DOUBT FIVE—YOUR CONVICTIONS

Mr. President, as Vice President to Ronald Reagan you were a loyal lieutenant. To my knowledge you never expressed public opposition to anything that happened in race relations in the Reagan years. You acquiesced in giving control of the civil rights agenda to elements of the Republican party whose strategy was to attract those voters who wanted to turn the clock back on race relations.

The Reagan Justice Department tried to give government tax subsidies to schools that practice racial discrimination as a matter of policy. And you went along. They were reluctant to push the Voting Rights Act renewal—and you went along. They vetoed the 1988 Civil Rights Restoration Act—and you went along. For eight years there was an assault on American civility and fair play and you went along. On what issue would you have spoken out? Was your role as Vice President more important than any conviction? Obviously, the issue of race wasn't one of them. Martin Luther King, Jr. wrote from his jail cell in Birmingham, "We will have to repent in this generation not merely for the vitriolic words and actions of bad people but for the appalling silence of good people."

Mr. President, you saw black America fall into a deeper and deeper decline during the Reagan years. From 1984 to 1988, the number of black children murdered in America increased by 50 percent. Today, 43 percent of black children are born in poverty. And since 1984 black life expectancy has declined—the first decline for any segment of America in our history. Yet in the face of these unprecedented developments, you said and did nothing. Why did you go along?

In 1989, when you took over you promised it would be different. But it hasn't been. The rhetoric has been softer at times, but the problem is the same. At Hampton College, a predominantly black school, you recently promised "adequate funding" for Head Start, but three out of four eligible children are still turned away. Do you believe what you say? What is more important than getting a generation of kids on the right education track? I'm all for the important work of the Thousand Points of Light Foundation but for it to really succeed a President and his government must be the beacon.

Maybe you have no idea what to do about kids killing kids in our cities and people sleeping on the streets. Maybe out of wedlock births are outside your experience and not of importance to you. Maybe you really have concluded that urban enterprise zones and the HOPE program are a sufficient urban poverty strategy. Maybe families to you don't include white and black families living in cities, struggling to make ends meet against the same high odds, which you refuse to reduce. Maybe you just don't understand. Maybe, maybe, maybe.

Who knows? We rarely hear your voice. At West Point, you exhorted America to be colorblind. But without doing something about inequity and poverty the call for colorblindness is denial and arrogance. Mr. President, you have to create a context in which a colorblind society might eventually evolve. Right now you are neither similar to the stern father administering bad news and discipline to his children, nor the wise father helping his children come to terms with emotions they don't understand or prejudices they can't conquer. And you are certainly not the leader laying out the plan and investing the political capital to change conditions.

So, Mr. President, my concern is not just the 1991 Civil Rights Act or the fate of Clarence Thomas. Your Civil Rights Bill, the Democrats' Civil Rights Bill, the Danforth Civil Rights Bill all say pretty much the same thing to business: Pay attention to your hiring practices; make an effort to find minorities who can do the job because it is in the national interest for pluralism to truly work. There is no reason we can't find language that 60 Senators can support.

But you, or those working for you—don't appear to want a compromise. Not yet. Businessmen wanted a compromise and your White House pressured them to back off talks. Senator Danforth wants a compromise—but he hasn't gotten much encouragement. Some Senators, Republicans, want to be responsible but they say you're not dealing in good faith. Your operatives apparently don't want to lose a political issue—not yet.

Mr. President, as you and your men dawdle in race politics consider these facts: We will never win the global economic race if we have to carry the burden of an increasingly larger unskilled population. We will never lead the world by the example of our living values if we can't eradicate the "rsservation" mentality many whites hold about our cities. We will never understand the problems of our cities—the factories closed, the housing filled with rats, the hospitals losing doctors, the schools pock marked with bullet holes, the middle class moved away—until a white person can point out the epidemic of minority illegitimacy, drug addition and homicides without being charged a racist. We will never solve the problem of our cities until we intervene massively and directly to change the physical conditions of poverty and depravation. But you can still win elections by playing on the insecurities our people feel about their jobs, their homes, their children, and their future.

And so our greatest doubt about you is this: is winning elections more important to you than unifying the country to address the problems of race and poverty that beset us?

The important thing is not whether you veto a bill in the pitched battle of politics but whether you will veto or voice the desirs we feel in our hearts to build a new trust in this country—trust in unity and opportunity, trust in ourselves, trust in one nation, indivisible with liberty and justice for all.

Mr. President, this is a cry from my heart, so don't charge me with playing politics. I'm asking you to take the issue of race out of partisan politics and put it on a moral plane where healing can take place.

I believe the only way it will happen is for you to look into yourself and tell all of us what you plan to do about the issues of race and poverty in this country. Tell us why our legitimate doubts about your convictions are wrong. Tell us how you propose to make us the example of a pluralist democracy whose economy and spirit takes everyone to the higher ground. Tell us what the plan of action is for us to realize our ideals.

Tell each of us what we can do. Tell us why you think we can do it.

Tell us why we must do it. Tell us, Mr. President, lead us, put yourself on the line. Now. Now.

I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. COCHRAN. Mr. President, are we in morning business?

The ACTING PRESIDENT pro tempore. We are in morning business until 10 o'clock.

Mr. COCHRAN. I thank the Chair.

(The remarks of Mr. COCHRAN and Mr. BUMPERS pertaining to the introduction of S. 1441 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

CHANGE TAX CODE, STOP HURTING FARMERS

Mr. BURNS. Mr. President, recently, I joined as an original cosponsor of S. 1130, the Family Farm Tax Relief and Savings Act. This proposal would provide tax relief and a retirement savings program for farmers. Farmers would be permitted to defer capital gains tax on the sale of farm assets by rolling the sale profit into an individual retirement account.

The Tax Code is particularly unkind to farmers. A farmer who works his whole life on the farm and then sells part or all of it in order to retire, is subject to a 28-percent Federal capital gains tax and additional taxes at the State level. This does not leave much to retire on. Recently, my colleague, Senator KASTEN, the sponsor of S. 1130, outlined this problem and our proposed solution in an excellent article published in the Milwaukee Sentinel. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Milwaukee Sentinel]

CHANGE TAX CODE, STOP HURTING FARMERS

(By F. James Sensenbrenner, Jr., and Robert W. Kasten, Jr.)

With over 80,000 farmers, Wisconsin is one of the leading producers of agricultural products in America. But as Wisconsin farmers know, farming has become an increasingly difficult profession. And the federal government's tax policies haven't made it any easier.

If the current recession persists, it is estimated that up to 4,000 Wisconsin dairy farm-

move forward, to adapt to new circumstances.

Let us move forward in our policy toward South Africa to encourage continued progress. Lifting the sanctions is the first step in a different and positive direction, and I look forward to this new era in United States-South Africa relations.

Thank you, Mr. President. I yield the floor.

THE CIVIL RIGHTS LEGISLATION

Mr. DANFORTH. Mr. President, since the nomination of my good friend and longtime associate, Clarence Thomas, to the U.S. Supreme Court, some Senators have asked me my intention with respect to civil rights legislation, which of course has been the subject of intense discussion and negotiation not only for the last month or so, but for about the last 2 years.

And, therefore, I would like to take the floor briefly this evening to state for whomever happens to be listening what my views are on the course of civil rights legislation.

Obviously, a great deal of my own time is going to be spent voluntarily attempting to persuade my colleagues to support the nomination of Clarence Thomas to the U.S. Supreme Court. He is a person I have known for 17 years. I first hired him when he was a third-year law student out of Yale Law School, and he worked for me in the attorney general's office in Jefferson City, and again came to work for me here in Washington. I know him to be a first-rate person and as a person who is eminently well qualified to serve on the Supreme Court. I am going to to be spending a lot of time working on that.

But I also want to make it clear that in no way is my determination to try to help pass the civil rights bill lessened by my commitment to spend a lot of time on the Thomas nomination. I believe that it is very important, Mr. President, for our country to resolve the issues that were created by the Supreme Court's various decisions on civil rights and to reestablish what I believe is the national consensus on civil rights in this country. And, therefore, in my view, the sooner we pass the legislation, the better off we are.

Mr. President, I have continued to have a variety of discussions since we returned from the recess with a variety of parties on the question of civil rights legislation. I think that the good that has been accomplished over the last few months is that we have succeeded in narrowing the issues so that a lot of the legalistic nature of the discussions that has gone on for the past couple of years is now, in my opinion, behind us.

We have succeeded in clearing away a lot of the underbrush and exposing the one issue which now has become the paramount issue on civil rights, and that issue is a policy issue; it is not a legalism. It is a policy issue which is pretty easy to explain and which now, in my opinion, is ripe for consideration both by the President of the United States and by Members of Congress.

In a nutshell, the policy issue that remains for consideration is this: Should it be lawful for an employer to create qualifications for employment which do not have anything to do with the ability of a person to do the job, and which qualifications serve to screen out women or to screen out minorities from employment? Should the employer be able to do that?

And that precise issue is the one that I think has now been presented because of the winnowing effect of what we have been doing over the last month in working on this legislation. We have exposed that precise policy issue.

Ways in which this policy issue could crop up might include, for example, whether an employer could establish a high school diploma as a requirement for employment for, say, a janitorial job, if the high school diploma, as a matter of fact, screened out a minority group from employment; or whether an employer could say that, as a matter of job qualification, single parents would no longer be employed by that particular business, even though that would obviously screen out women and would have no relationship to the ability of the employee to do the job.

Now, that is what we are down to. That is the most significant remaining issue in all of this debate on civil rights. And I think it is a fairly easy issue for people to come to grips with. Should an employer be able to say that janitors must have a high school diploma; yes or no? If the answer is yes, then the employer could use that qualification, unrelated to ability to do the job, as a way of keeping out perhaps some minorities from being able to have access to the workplace.

It is a very direct issue, a very fundamental issue, and an issue which was resolved by the U.S. Supreme Court back in 1971 in a case called Griggs versus Duke Power Co. In that case, the U.S. Supreme Court said that the employer could not use a high school diploma as a condition of employment for a job that did not require educational ability or educational background.

So the Supreme Court decided that in 1971. It remained the law until 1989, until the Supreme Court decided the Wards Cove case. And throughout all of these discussions over the last 2 years, most people have said that we should get back to the Griggs case. The administration has said repeatedly we should get back to the Griggs case. We should get back to the exact language that was used in the Griggs case.

Well, the holding of the Griggs case was that artificial qualifications unrelated to ability to perform the job could not be used as a screening device to screen out women or to screen out minorities. That was the holding of the case. That is the issue that is now before the policymakers.

Clearly, Mr. President, it would be a much better and easier and cleaner result for our country if we could decide that issue before it comes to the floor of the Senate. If the President of the United States would decide that the Griggs case should be the law, that these qualifications that have no relationship to job performance should not be used to screen minorities or women, if the President could decide that, then I believe we are very close to coming to an agreement which would be adequate in the eyes of the administration and the President, and which could become law.

I think we are very close to that. The President is going to be leaving for Europe. He is obviously going to be preoccupied by foreign policy matters for the next week and a half or so. But it is my hope that when he returns he could address this very fundamental policy question, hopefully to decide it in a way which would allow us to pass this bill very quickly.

In the event the President does not believe that the Griggs case is the last word on job qualifications, then it is my thought that the only available way to resolve the issue is the way that policy matters are normally resolved in our system, and that is that the legislation proceeds through the Senate and we see what happens to it in the normal course of affairs.

I think, again, just to wind up, that the best interests of the country would be served by reaching an agreement on this matter. I think that an agreement is very close. I think that we are down to one policy issue, and I think that policy issue is exactly the same one that the Supreme Court decided in the Griggs case in 1971.

I yield the floor.

CLOTURE VOTE ON S. 1241

Mr. DURENBERGER. Mr. President, I rise today to briefly explain my reasons for voting to limit debate on S. 1241, the Violent Crime Control Act of 1991

On March 6, President Bush challenged the Congress to pass a highway bill and a crime bill within 100 days. The Senate missed that deadline with the highway bill by 5 days; 126 days have now passed since the President's challenge, and this body has still not completed action on a crime bill that we have been considering 3 weeks.

We have debated and settled several controversial issues on this bill. On the issue of gun control, we struggled to come up with a compromise on the Brady bill that will facilitate the development of a national criminal identification system that should make it

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to be produced. Lower produotion means less employment for the working men and women of America. The rich do not produce these goods, working men and women do. When fewer of these so-called luxury items are produced, it is not the rich who face the economic hardship, it is the working men and women.

Trade associations who represent the industries that are now subject to the luxury excise taxes have stated that the taxes have caused a substantial decline in sales and production of these goods. The auto industry cites a permanent drop in demand of 20 percent. The boat manufacturers stated the taxes contributed to a net job loss of 19,000 blue-collar manufacturing jobs and bankruptcy for countless small family-owned businesses. The same trend can be seen in the jewelry, fur, and aircraft industries. Instead of raising revenue for the Federal Government, the luxury excise tax may cost the Government money. Jobs and production will be lost while unemployment and economic hardship for working Americans will increase.

Last year, we passed the second largest tax increase in the Nation's history. The reason was supposed to be to reduce the deficit and at the same time make the tax system more fair by targeting the new taxes to the rich. All but the poorest Americans, however, will suffer because of these new taxes. What would be more fair to all Americans would be for the Congress to change its spending habits so that tax increases would not be necessary. Domestic spending will be increased by $1.83 for every dollar of new taxes contained in last year's agreement; that is absurd. Congress must learn to control its spending so that all Americans can face a fairer tax system, one which lets them keep more of the money that they earn.

PRIVATE PROPERTY RIGHTS ACT

Mr. SYMMS. Mr. President, I rise today to discuss the rising tide of support for S. 50, the Private Property Rights Act of 1991. This bill has passed the Senate as an amendment to the Surface Transportation Act. However, pending action on this bill in the U.S. House of Representatives, I continue to see widespread support for my legislation.

This bill will extend the protection afforded by the fifth amendment of the Constitution to property owners whose rights are threatened by Federal rules and regulations by requiring that the Department of Justice determine whether or not the new rules take private property.

More than 15 national organizations have thrown their support behind the Private Property Rights Act and more are adding their endorsement every day. Supporters include the American Farm Bureau Federation, American Forest Council, American Sheep Council, U.S. Chamber of Commerce, National Milk Producers Association, National Water Resources Association, National Forest Products Association, National Grange, Citizens for a Sound Economy, Competitive Enterprise Institute, and Blue Ribbon Coalition.

The bill is also endorsed by the White House and has the support of the President's Council on Competitiveness, which is chaired by Vice President DAN QUAYLE.

Another endorsement comes from Mr. Douglas E. Ericson of Idaho Falls, ID.

Mr. President, Mr. Ericson asked in his letter that I use his response to show other Senators that he supports this bill. At this time, I ask unanimous consent that the entire text of his letter appear in the CONGRESSIONAL RECORD.

IDAHO FALLS, ID,
June 23, 1991.

Hon. STEVE SYMMS,
U.S. Senate,
Washington, DC.

DEAR SENATOR SYMMS: Yes, I agree with you Senator Symms, and as a private property owner, I agree that private property rights must be protected, as guaranteed by the U.S. Constitution. I support the Private Property Act, and ask that you use my response to show other Senators that I support the bill.

Your letter on this subject specifically mentions the EPA as an agency that threatens property rights. Very appropriate.

For the past few years, at close range, I have seen the EPA in action. I have gained some insight into the attitude of the EPA administrators. My conclusions are not cheerful.

Zealots within EPA are able, and indeed anxious, to convert America to their vision to Utopia. There is little regard for private property rights in their vision.

Through the use of broad definitions of wetlands, and by arbitrary use of punitive measures relating to effluents, they have indirectly stated their agenda. That agenda is not amenable to the protection of private property rights.

Additionally, by placing most chemicals on sliding scales of toxicity and by clamping fiscally damaging regulations onto waste management, they are intruding into everyone's private life.

I believe your Private Property Act is a necessary statement to make at this time and I believe it can be an important first step in causing the EPA, and other offending agencies, to become more accountable to individual citizens.

Sincersly Yours,

DOUGLAS E. ERICSON.

JUDGE THOMAS IS NOT A QUOTA NOMINEE

Mr. HATCH. Mr. President, I would like to speak to the issue of the nomination of Judge Clarence Thomas to the Supreme Court of the United States.

Mr. President, some liberals have objected to his nomination and some have subjected President Bush and Judge Clarence Thomas to a very ironic criticism. They claim Judge Thomas is a quota appointment.

I find the claim patronizing and cynical. It is usually made by those who do not know the excellence of Judge Thomas.

Some of these same critics had indicated their wish that President Bush nominate a black person to succeed Justice Marshall. Evidently, they wanted it both ways: If the President had not nominated a black person, they would have called him insensitive. Now that he has done so, they aocuse him of making a quota appointment.

This unfortunate charge is, of course, a byproduct of the racial preference and reverse discrimination policies favored over the years by many liberals who now critioize President Bush's appointment. Having fostered a racial and gender numbers game over the last 20 years, they have created an environment where any time a minority person or a woman gets a job or promotion that they deserve on the merits, especially in a nontraditional position, their qualifications are challenged.

In Judge Thomas' case, these liberals apparently oannot believe that an intelligent, hardworking, highly qualified black American does not necessarily subscribe to all of their tired, old policies. His beliefs may not fit their apparent stereotype of what a black leader should believe. Those liberals seem to be saying, he cannot be the best person for the job if he does not think like us. And, heaven forbid, he does not even share our love for numerical racial and gender preferences. He actually believes equal means equal, and that the law should apply without racial preference for or against anyone. Clearly, they say, such a black American cannot be the best available person.

Mr. President, it is often said that the Senate is the last plantation in America. I hope the Senate does not act like one when it considers Judge Thomas' nomination.

JUDGE THOMAS IS WELL QUALIFIED

Mr. President, let us dispose of this canard that Judge Thomas' nomination is in any way questionable because he has been a judge for less than 2 years. Out of the 105 Justices serving on the Supreme Court in our Nation's history, 41 had no prior State or Federal judicial experience—41, Mr. President. Another 10 Justices had 2 years or less experience on State or Federal benches. Many of the most distinguished Justices of the Supreme Court had no prior State or Federal judicial experience whatsoever.

James Wilson, of Pennsylvania, played a role second only to Madison at the Constitutional Convention, and he had no prior judicial experience.

John Marshall, of Virginia, who is widely regarded as the single greatest Justice to have ever served on the

court, and he had no prior judicial experience.

Joseph Story, of Massachusetts, another all-time great Justice who stood shoulder to shoulder with John Marshall for 25 years in furthering a strong union, and for another 10 years after Marshall's death; who is well known for his 1833 commentaries on the Constitution of the United States, for his famed Harvard Law School lectures, and for his work on copyrights and patents; and he had no prior judicial experience.

John Archibald Campbell, of Alabama, who was so well regarded that he is probably the only nominee for whom the entire membership of the Supreme Court wrote a letter to the President, Franklin Pierce, urging his nomination, and he had no prior judicial experience.

Louis Brandeis, of Massachusetts, universally regarded as one of the all-time great Justices, served with distinction for 23 years, and he had no prior judicial experience.

George Sutherland, of my own State of Utah, a leader in the Utah bar, and the intellectual-philosophical leader of the anti-New Deal wing of the Supreme Court, has been rated by many court observers as one of the top Justices to have served, and he had no prior judicial experience.

Felix Frankfurter, of Massachusetts, served with great distinction for 23 years, and he had no prior judicial experience.

William O. Douglas, of Connecticut, a towering figure on the Court for over three decades, indeed he joined the Court from the chairmanship of a Federal agency, the Securities and Exchange Commission, and he had no prior judicial experience.

Robert H. Jackson, of New York, another highly regarded Justice, who authored the opinion in *West Virginia State Board of Education* v. *Barnette* (319 U.S. 624 (1943)) striking down a State flag salute statute and who served as the American Chief Prosecutor at the Nuremberg Nazi war crimes trials, and whose dissent in Korematsu versus United States, a case upholding the exclusion of Americans of Japanese ancestry from the west coast during World War II, rings out to this very day. He warned that "once a judicial opinion * * * rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle of racial discrimination in criminal procedure and of transplanting American citizens. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. Every repetition imbeds that principle more deeply in our law and thinking and expands it to new purposes." His prophecy has come true, as reverse discrimination, to the extent the Court has so far sanctioned it, is justified by its proponents on the basis of allegedly urgent needs. Justice Jackson had no prior judicial experience—indeed, he never graduated from law school.

Earl Warren, of California, led the Court in overturning numerous precedents, including Plessy versus Ferguson, widened the rights of criminal defendants, reshaped State legislatures under the one-man, one-vote doctrine, and he had no prior judicial experience.

Justices Byron White, of Colorado, and Arthur Goldberg, of Illinois, appointed by President Kennedy; Justice Abe Fortas, of Tennessee, appointed by President Johnson; and Justices Lewis Powell, of Virginia, and William Rehnquist, of Arizona, appointed by President Nixon—combined, they had zero judicial experience.

Justice Hugo Black, of Alabama, had 1½ years of State judicial experience.

John Harlan, the elder, of Kentucky, nominated at the age of 44, is another Justice generally regarded as one of the all-time greats, and who penned one of the most famous dissents in the Court's history, in Plessy versus Ferguson, when he correctly and courageously wrote, "Our Constitution is colorblind, and neither knows nor tolerates classes among citizens," and he had 1 year of prior judicial experience on a State court.

His grandson, John Marshall the younger, was a brilliant exponent of his legal point of view, often in dissent in the Warren years, and he had only 1 year or prior judicial experience.

I could go on, but my point is this: I would not want to see Judge Thomas subjected to some kind of double-standard with regard to judicial experience. He has had so much or more judicial experience as nearly half of the Justices confirmed by the Senate. The use of double standards to deny black people jobs when the real reason is something else is an old tactic. Here, the reason his critics question his nomination is not because of a lack of judicial experience, but because they think he will not vote the way they want him to vote. Some critics are troubled that he is a forthright opponent of reverse discrimination, whatever the euphemism used to mask it. He believes our civil rights laws apply equally to all Americans, without preference for any American.

Moreover, Judge Thomas has a wealth of impressive qualifications. He is a graduate of the College of the Holy Cross and the Yale Law School. He served for 2½ years as assistant attorney general for Missouri, under our distinguished colleague, Senator JOHN DANFORTH. I cannot imagine a finer introduction to the practice of law and a better training ground for the Supreme Court than this office. He was an attorney at Monsanto Co. in St. Louis, MO, for over 2½ years. For nearly 2 years thereafter, he rejoined Senator DANFORTH as a legislative assistant. In this stint with Senator DANFORTH, he worked on matters involving energy, environment, public works, and the Department of the Interior. In 1981, he became assistant secretary of education for civil rights. A year later, he began an 8-year tenure as chairman of the Equal Employment Opportunity Commission. For over a year, he has sat on the prestigious Court of Appeals for the District of Columbia. He has been a member of the board of trustees of the College of the Holy Cross, his alma mater.

This wide range of public service, at the State and Federal levels, and in the private sector, will serve him well on the High Court. Judge Thomas has been in the public arena. He has faced controversial issues. He has stood up to pressures from both the right and the left while in the Reagan administration. He is his own man. He is well qualified and experienced.

The PRESIDING OFFICER. The Senator's time has expired.

The Chair recognizes the majority leader.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXTENSION OF MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the period for morning business be extended for 5 minutes so as to permit the Senator from Nebraska to address the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nebraska is recognized for those 5 minutes.

Mr. EXON. I thank the Chair and the majority leader.

Mr. President, I ask unanimous consent that the remarks that I am about to make appear in the RECORD immediately following the remarks by my colleague from Nebraska, Senator KERREY, on the talk he gave regarding health care earlier this morning.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. EXON. I thank the Chair.

(The remarks of Mr. EXON pertaining to the introduction of S. 1446 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. EXON. I thank the Chair, and I yield the floor.

UNANIMOUS-CONSENT AGREEMENT—S. 323

Mr. MITCHELL. Mr. President, I ask unanimous consent that the majority leader, following consultation with the Republican leader, may at any time proceed to the consideration of Calendar No. 125, S. 232, the gag rule bill, notwithstanding the provisions of rule XXII.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I ask unanimous consent that I may proceed for 5 minutes or so as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUDGE CLARENCE THOMAS

Mr. DANFORTH. Mr. President, I regret to say that this afternoon the Congressional Black Caucus held a meeting in which it voted to oppose formally the nomination of Clarence Thomas to the U.S. Supreme Court. And it is my understanding that at that meeting it was further decided that the Congressional Black Caucus would attempt to mount a sort of political campaign throughout the country against the Thomas nomination. The effort would be made, as I understand it, to communicate with black political leaders throughout America and urge them to weigh in against the Thomas nomination.

I regret their decision for several reasons. One, because it was really a rush to judgment. No effort was made to find out the facte. It was even decided not even to try to review Judge Thomas' record before making the decision.

But there are a couple more reasons that cause me even more concern. The first is that I am concerned that we are seeing a rerun of what happened with the Bork proceedings. At that time there was an effort by opponents of Judge Bork to in effect go over the head of the Senate, particularly during the summer recess at that time, and to whip up various interest groups by creating the impression that Judge Bork was something of an ogre, a villain, and by so creating that impression frighten various groups to in turn weigh in with their Senators, and make appeals with their Senators particularly during the recess.

I do not think that confirmation proceedings should be conducted in that way. I do not believe that confirmation proceedings for the U.S. Supreme Court should be political campaigns designed to build blocs of interest groups to oppose a Supreme Court nominee. For that reason, I am very concerned about this development. I can see it coming all over again: The politicization of the confirmation process, as though it was a political campaign as though it was a campaign for President or the Senate.

Mr. President, there is another reason why I am particularly concerned, and this, to me, is the greatest reason why we should be aware of what I am afraid is going on. The worst threat to this country is nothing that happens abroad. The worst threat to this country, in the opinion of this Senator, is not the deficit and the budget, or anything relating to the economy. The worst threat to this country is divisiveness on the basis of race. That is the great threat to America.

The great challenge to America is how to hold our country together as one people, regardless of race; how to draw us together and hold us together. So the great threat is the politics of race. And it is a very attractive political tool. It has been used by Republicans; it has been used very recently by Republicans, and it has been advocated by Republicans: Let us play the race card.

But it is no less playing the race card for members of the Congressional Black Caucus to organize black politicians around the country to oppose a black judge who has been nominated for the Supreme Court on the basis that he does not have the right ideology. That is racial politics. That is divisive. And that is at least equally as dangerous as anything that is done with respect to the quota card.

The reason I have been trying to work on a civil rights compromise is to get race out of partisan politics and to get it into partisan politics, no matter what the source, is something that threatens the very fabrio of this country.

Mr. President, I hope that Americans—white and black—all over America will say: We just do not want this to happen; we do not want it to happen in the context of the civil rights legislation; we do not want to have it happen in the context of the Thomas nomination. That is a thing of the past. That is a thing of the days of Theodore Bilbo and the Ku Klux Klan. That is not America of 1991.

The American people are going to be appealed to, apparently, as members of interest groups or racial groups, on the Thomas nomination. What Clarence Thomas stands for is that a person can be black, and he can think anything he wants and say anything he wants.

What Clarance Thomas said today when he was visiting one of the Senators was that he hoped that his nomination could further healing in this country along racial lines. We are going to have to ask ourselves whether we want healing, or whether we want more division; whether we want Americans to say "no" to this racial divisiveness, or whether we are going to fall for it yet again.

Whatever the decision, Mr. President, this Senator is going to do his best to point out what is happening in this debate. Let us have it all in the open—not just 40 phone calls; not just little letter-writing campaigns and an order to make people afraid of Clarence Thomas. Put it out in the open; call attention to it; put it in the spotlight of public attention, and let the American people respond.

I think the American people will say about Clarence Thomas: This is a decent person, and this is a qualified person, and this is the kind of person we want on the Supreme Court of the United States. And we are not going to be frightened and divided. We are going to support him, or we are going to oppose him on the basis of his human qualities or on the basis of his judicial policies, and not on the basis of some effort ripped up on the basis of race.

Mr. President, I yield the floor.

Mr. SIMPSON addressed the Chair.

The PRESIDING OFFICER. The Senator from Wyoming.

DIVISIVENESS AND RACISM

Mr. SIMPSON. Mr. President, I hope many of us heard those remarks of the senior Senator from Missouri. He is a man, I think, that commands our deepest respect. He is an extraordinary man, a man who has served in so many capacities, who has given us a conscience on many issues that come before us.

You will remember that it was Senator DANFORTH and Senator PRYOR—and we send him our prayers and blessings, and hope that he heals completely—that began to talk of the quality of life in this place. They worked very hard.

Here is a man who is a lawyer and an Episcopal priest, and when he speaks about divisiveness and racism, we should listen. I think today's action by the Congressional Black Caucus regarding the nomination of Judge Clarence Thomas for the U.S. Supreme Court is the worst form of injustice. I guess it would even be the worst form of prejudice. When you use the dictionary word of prejudice, just try to keep racism out of the word when you think of it.

But the caucus has already now passed judgment on Judge Thomas, passed judgment on his qualifications, without the benefit of a Senate Judiciary Committee hearing and without examining his record in any way, except on the issue of racism. How curious; how appalling; how repugnant.

And so, indeed, the American people will not even know why the caucus has

taken this precipitous action until sometime next week, when they will present to us some kind of trumped up charges against this outstanding individual. I think it is appalling.

I know many members of the Black Caucus. I intend to visit with them and ask them who did the arm-twisting on this one, and did not even allow Chairman JOE BIDEN and the ranking member, STROM THURMOND, to go forward—and we will go forward, I can assure you—with a hearing on the qualifications of one extraordinary human being, who is already serving on the Federal district bench, in the circuit court.

I concur fully with the remarks of my dear friend from Missouri. This is appalling conduct, very unbecoming, very divisive, and very unfortunate.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. AKAKA). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama is recognized.

(The remarks of Mr. HEFLIN pertaining to the introduction of S. 1467 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. HEFLIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HARKIN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, what is the status,

The PRESIDING OFFICER. The Senate is considering S. 1241, the crime bill, which is not pending.

Mr. GORTON. I ask unanimous consent that I be allowed to proceed for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Washington is recognized.

Mr. GORTON. I thank the Chair.

(The remarks of Mr. GORTON pertaining to the introduction of S. 1469 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GORTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—H.R. 2622

Mr. MITCHELL. Mr. President, I ask unanimous consent that there be 1 hour for debate on the Helms amendment No. 734 to the Treasury-Postal appropriations bill to be equally divided between Senators KENNEDY and HELMS; that upon the use of yielding back of time the Senate, without any intervening action or debate, proceed to vote on the Helms amendment; that immediately upon the disposition of the Helms amendment No. 734, the Senate, without any intervening action or debate, proceed to vote on the committee amendment; that there be 1 hour for debate, equally divided in the usual form, on each of the following first-degree amendments to H.R. 2622, and that they be considered in the following order:

A Kennedy amendment that is AIDS related; a Dole amendment that is AIDS related; a Mitchell amendment that is AIDS related: a Helms amendment that is related to child pornography; that no other amendments or motions to recommit be in order prior to the disposition of these amendments other than those referred to in the succeeding agreement; that at the conclusion of yielding back of each of these amendments, the Senate, without any intervening action or debate, proceeded to vote on each amendment; that the pending committee amendment and the Helms Amendment No. 734 be laid aside until Thursday, July 18, at a time on that day to be determined by the majority leader after consultations with the Republican leader; and that the other Helms amendment and the Kennedy, Dole, and Mitchell amendment referred to in this agreement not be in order prior to Thursday, July 18.

The PRESIDING OFFICER. Is there objection, The Chair hears none, and it is so ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that when the Senate resumes consideration of H.R. 2622, the Treasury-Postal Service appropriations bill on Monday, July 15, at 3:30 p.m., the only amendments remaining in order to the bill be the following first-degree amendments and those listed in the preceding agreement:

Two committee amendments, including the Helms perfecting amendment; a Kohl amendment regarding the IRS, which by previous consent will be considered under a 1-hour time limit; a Dodd amendment regarding locality pay; a Burns amendment regarding restrictions on first-class mail and postcards; a Bentsen amendment regarding the striking of section 104 and/or 102; a Smith amendment regarding the naval shipyard at Portsmouth, NH; and a managers' technical amendment; further, that the amendments be considered in the order listed, with the exception of the committee amendment with the Helms perfecting amendment; and that on Monday, if a Senator is not present and ready to offer his amendment upon disposition of the previous amendment, then that amendment is no longer in order; that no motion to recommit the bill be in order; and that on Monday no rollcall votes occur before 7 p.m.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

VIOLENT CRIME CONTROL ACT OF 1991

The Senate continued with the consideration of the bill.

Mr. MITCHELL. Mr. President and Members of the Senate, we will now proceed to vote on final passage of the crime bill. Because of the lateness of the hour and the fact that several Senators are not currently in the Capitol, we will have to have a period of approximately 15 minutes or so before we begin that vote, and that will be the last vote this evening. We will then not be in session tomorrow.

We will return to session at 3 p.m. on Monday, returning to the Treasury-Postal appropriations bill at 3:30 on Monday. Under the agreement just reached, there will then be a series of amendments offered on Monday with votes on those amendments to occur on Monday evening with no vote to occur prior to 7 p.m.

I am advised by the managers that it is not possible to know at this time precisely how many will require rollcall votes, but at least two or three of them are likely to require rollcall votes. So Senators should be aware that we will proceed on the Treasury-Postal appropriations bill on Monday with votes to occur after 7 p.m.

We will then have completed all action on the Treasury-Postal appropriations bill other than the amendments relating to AIDS and child pornography which were the subject of the first agreement. Those will be disposed of on Thursday at a time on that date to be determined by the majority leader following consultation with the Republican leader.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the following

achieve our goal of deposing Saddam Hussein from power in Iraq and—I hope—bring him to justice before an international war crimes tribunal to face charges for his crimes against humanity, the environment, and our civilized world.

If the President decides that it is necessary to order air strikes against Saddam's military machine because of his continued violation of the ceasefire agreement, I will certainly support that decision, as I am confident will an overwhelming majority of the Members of Congress.

But I fear that all the smart bombs in our arsenal will not be able to destroy every shred of Saddam's nuclear potential. As President Bush said recently, he can hide much of this kind of equipment in attics, in the desert, in ordinary buildings, hidden from the view of our intelligenoe resources, and protected from the power of our Air Force.

No number of bombs will ever be able to destroy Saddam's will, his desire to be a nuclear power, to dominate the gulf region, to threaten the fabric of international law and peace in the world.

Mr. President, the final chapter of the gulf war has yet to be written. The revelations about Saddam's nuclear potential should impel us toward his ultimate defeat. For it is not just the people of Iraq who will suffer at the hand of Saddam, if he fullfills his dream of nuclear power. Saddam, with the bomb, makes Kurds of us all.

Given that fact, we must do everything in our power to keep the attention of the world on Saddam Hussein. We must not give him an inch. President Reagan once said of the Soviets, "Trust, but verify." With Saddam, we must not even trust. We must keep increasing the pressure, turning the screws on his rule.

Toward that end, I support any and every effort by the President to isolate Saddam, to destroy his ability to fight, to end his rule.

We are entering an era when radical villains, armed with weapons of mass destruction, can emerge as primary threats to the security of the American people. Saddam Hussein may, unfortunately, represent a harbinger of the future.

It is important that we make him an example of how we will respond to such threats. All the more important that we bring down Saddam, before he acts to bring the bomb down on anyone.

I thank the Chair. I yield the floor.

The ACTING PRESIDENT pro tempore. The President pro tempore is recognized.

Mr. BYRD. I thank the Chair.

(The remarks of Mr. BYRD pertaining to the introduction of Senate Joint Resolution 177 and Senate Joint Resolution 178 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The ACTING PRESIDENT pro tempore. The Senator from Utah is recognized.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. HATCH. Mr. President, I am concerned that a subterranean campaign of innuendoes, distortions, half-truths, selective commentary, and erroneous anecdotes is being revved up to tear down Judge Clarence Thomas.

Let me address a couple of matters that have drawn some comment to set the record straight.

Some in the news media and others have drawn attention to criticisms Judge Thomas has made of some in the civil rights movement. This one-sided recitation of some of the judge's remarks left such an unfair impression of his views of the civil rights movement that he felt constrained to praise that movement during one of his courtesy calls last week. Let no one think that this is belated praise designed to answer current critics. Indeed, Judge Thomas has, over the years, had plenty of praise for the civil rights movement.

In an October 23, 1982, speech before the Maryland Conference of the NAACP, as the then newly installed Chairman of the EEOC, here is part of what Judge Thomas said:

I would like to talk with you about why I believe that you are the group that can truly make a difference for blacks in this country, what I think the challenges will be in the future, and what we are doing at the Federal level to address the problems of discrimination. * * * The pervasive problsm of racial discrimination and prejudice has defied short-term solution. The struggle against discrimination is more a marathon than short sprint. Political parties have come and gone, leaving behind them the failures of their quick fixes. Promises have been made and broken. But one group, the NAACP, has remained steadfast in the fight against this awful social cancer called racial discrimination.

The NAACP has a history of which we can all be proud. From its inception in 1909 until today, the work this organization has done in the area of civil rights is unmatched by any other such group. At each turn in the development of blacks in this country, the NAACP has been there to meet the many challenges. * * *

Mr. President, I note that the judge has often acknowledged the significant role of the civil rights movement and how he, personally, has benefited from it.

In volume 21 of Integrated Education, in 1983, the judge wrote, "Many of us have walked through doors opened by the civil rights leaders, now you must see that others do the same." In a January 18, 1983, speech at the Wharton School of Business in Philadelphia, Judge Thomas said:

As a child growing up in the rural South during the 1950's, I felt the pain of racial discrimination. I will never forget that pain. Coming of age in the 1960's, I also experienced the progress brought about as a result of the civil rights movement. Without that movement, and the laws it inspired, I am certain that I would not be here tonight.

In an October 21, 1982, speech at the Third Annual Metropolitan Washington Board of Trade, EEO Conference, Judge Thomas described himself as "a beneficiary of the civil rights movement."

In an April 7, 1984, speech at the Yale Law School Black Law Students Association Conference, Judge Thomas noted that the freedom movement of black Americans was not a sudden development, but "had been like a flame smoldering in the brush, igniting here, catching there, burning for a long, long time before someone had finally shouted 'Fire!'"

He asked, in effect, who was responsible for this. The judge then went through a litany of people and events that helped fan the flames of freedom. He asked, in part, whether it was—

* * * The founders of the NAACP * * * or the surge of pride which black folks felt as they huddled around their ghetto radios to hear Joe Louis preaching equality with his fists, or hear Jesse Owens humbling Hitler with his feet?

Was it A. Philip Randolph, mobilizing 100,000 blacks ready to march on Washington in 1941—and FDR hurriedly signing Executive Order 8802 banning discrimination in war industries and apprenticeship programs?

Or the 99th Pureuit Squadron, trained in segregated units at Tuskegee, flying like demons in the death struggle high over Italy?

Was it Rosa Parks who said "No" she wouldn't move; and Daisy Banks who said "Yes," black children would go to Central High School?

Or the three men who had been the black man's embodiment of blitzkrieg—the most phenomenal legal brains ever combined in one century for the onslaught against injustice—Charles Houston, William Hastie, Thurgood Marshall?

Or a group of students who said, "We've had enough. I mean, what's so sacred about a sandwich, Jack?"

Or men named Warren, Frankfurter, Black, Douglas who read the Bill of Rights and believed?

Mr. President, I realize it may seem more newsworthy to report the judge's remarks only when they have been critical of the traditional civil rights leadership. Realize his critics, who object to his expressed views against reverse discrimination, wish to make him look ungrateful. But it is a false portrait—a caricature—being drawn. These remarks I have quoted are readily available and I hope they will be given their fair dues.

Next, it has been widely reported that in 1983, Judge Thomas had some words of praise for minister Louis Farrakhan. The initial radio reports I heard pretty much left it at that, a deft piece of guilt by association. The reference to Farrakhan in the two speeches in question were apparently drafted by others and may not even have been delivered, according to our colleague, Senator DANFORTH. Here is

what Judge Thomas may have said in one or two speeches in 1983:

In the words of Minister Louis Farrakhan of the Nation of Islam—a man I have admired for more than a decade: "And so, I say to you, whether America overcomes or not, we the poor, we the oppressed, we the blacks, we the Hispanics, we the disinherited, we the rejected and most despised, we will overcome and then together we will be able to say in the words of Dr. Martin Luther King: Free at last, free at last, thank God Almighty, we have united and made freedom a reality at last."

Thus, the judge was expressing agreement with a self-help philosophy. This was in 1983, before minister Farrakhan's anti-Semitic views became well known during the 1984 Presidential campaign. Those who closely track such matters may have been aware of Farrakhan's earlier anti-Semitic remarks, but most people were not aware of them.

I have known Judge Thomas for some 10 years. I have spoken with others who have known him, including Jewish friends of his and mine. There is not a prejudiced bone in the man's body. Any suggestion by anyone—by anyone—that the judge harbored any prejudicial views about Jews is simply and emphatically untrue.

Judge Thomas issued a statement July 12 in which he said:

I cannot leave standing any suggestion that I am antisemitic. I am and have always been unalterably and adamantly opposed to antisemitism and bigotry of any kind, including by Louis Farrakhan. I repudiate the antisemitism of Lousis Farrakhan or anyone else. While I support the concept of economic self-help, I have never supported or tolerated bigotry of any kind.

Indeed, Mr. President, in reviewing some of the judge's earlier public remarks, I came across an item from the January 26, 1987, Daily Labor Report. I will quote an entire paragraph of the judge's remarks, which include a reference to Jews, so that the full context is understood:

People have assigned a lot of different motives to what I do, but it's really simple. I don't see how any race policy other than neutrality can be good. I can see absolutely no benefit from them. Segregation was wrong. Apartheid [is] wrong. The policies toward Jews in the Soviet Union are wrong. It used to be the morally good thing to say you're not bigoted against anybody. Now, it's like I'm not in favor of black if I'm not bigoted against anybody. If I'm not for preferences, then I'm against blacks. But I'm not for prefernces for whites either. I just think everybody should be treated fairly. That'e it.

I was pleased to read the falrminded comments of Kenneth Stern, described in the July 13, 1991, Washington Post as "as specialist on antisemitism and extremism at the American Jewish Committee." The Post wrote that Mr. Stern "said that Thomas' statement about Farrakhan came," and now I am quoting Mr. Stern in the Post, "before Farrakhan was generally known to be a rabid antisemite. * * * Somebody who was not following Farrakahan very closely might not have known that about him."

The Post story continues:

Stern said the American Jewish Committee did not have a problem with Thomas' speech because, "Farrakhan has also said other things that Thomas might have been referring to and Farrakhan's antisemitism was not that generally well-reported" at that time.

Rabbi Marvin Hier, dean of the Simon Wiesenthal Center, a Jewish human rights group based in Los Angeles, was quoted in the New York Times on July 13, 1991, as saying:

We accept Judge Thomas at his word, that he has never been antisemitic and repudiates Louis Farrakhan.

Anti-Semitism has no place in our public or private lives. Judge Thomas has always agreed with that position.

Finally, some reports have had it that Judge Thomas, in an earlier job in Missouri in the mid-1970's, had a Confederate flag in his office. This has touched off a small amount of speculation. Some of it has been small-minded psychobabble. Indeed, one critic, perhaps facetiously, cited this alleged fact for the proposition that Judge Thomas "has appropriated the values and philosophy of those responsible for the vertical relationship of white over black, rich over poor," if you can believe that one, Mr. President. [Haywood Burns, July 9, 1991, New York Times]. Others have guessed that hoisting the Stars and Bars was just another contrary way for the judge to express his well-known independence.

Mr. President, Judge Thomas mentioned this report to me in our visit Thursday. He said he had spoken with some of his colleagues from the period in question. I can now report to the Senate and the American people: Apparently, the flag in Judge Thomas' office was the flag of his home State of Georgia.

I realize this startling revelation may touch off a new round of incisive commentary and analysis of the judge's psyche. Did he also have an American flag in his office? If not, why not? Does the display of the Georgia State flag, a Deep South State, evince a devotion to the doctrine of States rights? I cannot wait to read the next round of speculation to find out. I suspect, however, that it simply reflected the judge's pride in his home State.

Mr. President, nominations of Supreme Court Justices are always interesting. They always create a lot of heat. They always create a lot of interest. But fair is fair. I believe it is time to start treating Clarence Thomas as the decent, honorable man of integrity that he really is.

Mr. President, I have known him for a little over 10 years. I know the man. I know what kind of a person he is. I know where he is coming from. I know that this man does not have a prejudiced bone in his body. I know he is not on the far right or the far left. Therefore, he is not going to please either of the extremes. But I can tell you that he is going to please an awful lot of people, to the left of center from time to time and to the right of center from time to time, if given the chance to serve on the Supreme Court. I believe he will be given that chance.

Mr. President, I hope we will all be fair to Judge Thomas and give him every opportunity we can. I hope the media will be fair to him and not cite things out of context. And I hope that the media and commentators will tell the Judge Thomas full story—and treat him with the dignity he deserves and treat his nomination with the dignity it deserves.

I yield the floor.

TRIBUTE TO FRANK PASQUALE III

Mr. DECONCINI. Mr. President, it is with great pleasure that I rise today to bring to the attention of my colleagues a significant accomplishment of one of my young constituents, Frank Pasquale III. Frank, a student at Paradise Valley High School, is the winner of the sixth annual national Citizen Bee competition conducted by the Close Up Foundation. The Citizen Bee national final is a 2-day competition which puts high school students through grueling written and oral exams on current world events, American history, geography, government, and economics.

In total, more than 140,000 students from 3,700 high schools throughout 45 States, the District of Columbia, Guam, and the Department of Defense Dependent Schools competed this year. One hundred and nine other students joined Frank in Washington for the national final answering questions that would baffle even most Members of Congress. Mr. President, I would like to offer congratulations to each of the finalists for this dedication to the countless hours of study and preparation which this competition demands. I will ask unanimous consent that the list of all of the finalists to be printed at the end of my statement.

At a time when our focus is on the troubled spots in our Nation's educational system, it is refreshing to bring to your attention the work of the Close Up Foundation's Citizen Bee competition which has been successful in getting students excited about civic education. The Citizen Bee combines the talents and hard work of the student participants with the encouragement and dedication of their teachers, parents, and community sponsors. I would like to express my gratitude to those parents who have taken an active role in their children's education, as well as the dedicated teachers. I would also like to recognize the commitment of the local, State, and national sponsors who helped make this educational

control lists within three months of the passage of the bill.

CLARENCE THOMAS AND THE LIBERAL "LYNCH MOB"

Mr. DOLE. Mr. President, although it's been just 2 weeks since President Bush first nominated Judge Clarence Thomas to the Supreme Court, the liberal lynch mob is already forming outside the Judiciary Committee hearing room.

As Alan Keyes points out in today's Washington Times, Judge Thomas' nomination has "aroused the nastier instincts" of some of his liberal critics, who cannot figure out how a black man in America can be both a Republican and a conservative.

I suspect that much of the liberal criticism directed at Judge Thomas stems not from a close analysis of his record, but from pure, unadulterated self-interest.

For the past 25 years, the civil rights leadership in this country has operated like a public utility monopoly. The liberal leadership packages the correct civil rights message and the liberal media glowingly reports this message to America—uncritically and without dissenting votes.

Those in black America who don't buy into the message are shunned into silence.

So, Mr. President, it is no wonder that Judge Thomas—with his independent thinking and intellectual integrity—is a threat to the self-proclaimed keepers of civil rights orthodoxy.

Ad homine attacks—such as the cheap shot by columnist Carl Rowan, who absurdly compares Judge Thomas with the bigot David Duke—are the first warning signs of an orthodoxy coming to the painful realization that it does not have a monopoly on the truth.

Mr. President, I ask unanimous consent that the article by Mr. Keyes be printed in the RECORD immediately after my remarks.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, July 15, 1991]

"OUTING" BIGOTS WHO LURK ON THE LEFT

(By Alan Keyes)

Besides provoking a flurry of interest in black conservatives, the Clarence Thomas nomination has apparently aroused the nastier instincts of some of his supposedly liberal critics.

Take, for example, the outburst by black columnist and TV commentator Carl Rowan: "If they had put David Duke on, I wouldn't scream as much because they would look at David Duke for what he is. If you gave Clarence Thomas a little flour on his face, you'd think you had David Duke talking.

Apparently, if we put a little flour on his face, Judge Thomas might have some hope of getting a fair hearing from political bigots. Since he's black, fairness need not apply.

Mr. Rowan has always been a champion practitioner of the vicious racial intimidation through which some black leaders have tried to keep the black community in the grip of political and intellectual totalitarianism. Disagree with them and you're instantly excommunicated from the black race, accused of being a "white-thinking black," an "Oreo cookie" or, at the very least, a foot-shuffling Uncle Tom.

Mr. Rowan's knee-jerk bigotry comes as no surprise to me. In 1988, when the Maryland Republican Party nominated me for the U.S. Senate, he wrote a column dismissing my candidacy as a "token" because I was black. He didn't interview me. He didn't look at my background or experience in government. He looked only at my skin color and boldly prejudged the situation.

As it turned out, nearly 40 percent of Maryland's voters disagreed with him, a showing that equaled or exceeded that of the Republican candidates in the two preceding Senate races.

This is, of course, precisely the kind of prejudice the great champions of the civil rights struggle fought against. Yet people like Mr. Rowan routinely practice it, while lambasting others for betraying the civil rights cause.

Why are petty, close-minded bigots allowed to call themselves "liberals"? Until it was hijacked by these covert totalitarians the word liberal implied a generous, fair-minded approach to issues. It implied a willingness to give all sides a hearing. Now it refers to intellectual fascists who deem themselves the good guys and say their way is the only way.

Another clear example of this bigotry has emerged in "know-nothing" anti-Catholic slurs and innuendo against Judge Thomas by advocates of abortion. Though the political archetype of contemporary liberal idealism, John Kennedy, was himself a practicing Catholic, these virulent, single-issue ideologues feel justified in stirring up the corrosive venom of religious bigotry in their zeal to take Judge Thomas apart. Yet the Catholics who now sit on the court were confirmed without such scurrilous attacks.

Since Judge Thomas is black, the pro-abortion zealots think it's safe to show their religious bigotry in ways they wouldn't dream of doing if he were white.

Contemporary liberals always have suffered from an undercurrent of condescending bigotry. That's why the liberal stereotypes of the "victims" of society correspond so closely to the old racist sterotypes that victimized blacks in the first place.

Today, when they say "helpless," do they still mean "lazy"? Today, when they say "disadvantaged," do they still mean "inferior"? Today, when they say "underclass," don't they still mean second-class citizens?

As victims, blacks still are placed conveniently to be looked down upon. If a black person dares to look them in the eye, to think for himself, to claim with pride a role in his own achievements, they rush to stomp him down, just as racist mobs in the old South took it upon themselves to deal peremptorily with what they called "uppity" blacks.

Clarence Thomas is such a person and the lynch mob is forming. Some blacks like Carl Rowan are helping to knot the rope. Others like Benjamin Hooks are hesitating, sensing, I think, the trap laid out before them. Somewhere in their hearts they know that even though the ideologues say they're "Borking" a conservative, in reality they're just lynching another black.

PROCEDURES ON HABEAS CORPUS

Mr. SPECTER. Mr. President, during the course of the consideration of the crime bill, there was extensive consideration given to procedures on habeas corpus. In a colloquy with the distinguished chairman of the Judiciary Committee, Senator BIDEN, there was a discussion about the need for holding hearings to reform habeas corpus procedures. By letter dated May 22, 1991, vice dean and professor of law, James S. Liebman from the School of Law of Columbia University in the city of New York wrote with some interesting and worthwhile ideas on reforming habeas corpus procedures. I ask unanimous consent that this letter be printed in the RECORD so that it may be reviewed in advance of the Judiciary Committee hearings on habeas corpus to be held in the future.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

COLUMBIA UNIVERSITY IN
THE CITY OF NEW YORK,
New York, NY, May 22, 1991.

Re: Capital Habeas Corpus Reform.

Hon. ARLEN SPECTER,
U.S. Senate, Washington, DC.

DEAR SENATOR SPECTER: On May 7, 1991, American Bar Association President John Curtin and I testified before the Senate Judiciary Committee on the subject of habeas corpus reform. I was struck during the hearing by the thoughtfulness of your effort to get free of the rhetoric coming from both sides in the debate and to come up with a genuine solution to the problem of death penalty habeas corpus review. Speaking now only for myself, as a law professor and student of habeas corpus, I thought that it might be helpful—and I hope not too presumptuous—to provide my thoughts directly to you. I do so in particular because I believe that your proposal (S. 19) is very much on target in theory and general approach.

Habeas corpus is a very complex procedure right now, largely due to the procedural default and nonretroactivity (Teague) doctrines. In the usual, noncapital case, that complexity speeds up the process in the sense that it deters many prisoners, acting without counsel, from filing. As a result, the per capita rate at which prisoners file habeas corpus petitions has dropped to less than one third of the habeas corpus filing rate at its peak in 1970 (and is still dropping). As you seemed to suggest during the hearings, the habeas corpus system works well enough in *noncapital* cases and does not now need the radical surgery that the Administration has proposed.

Capital cases are different. In those cases, complexity slows down the process because the lawyers representing capital petitioners can handle, and even take advantage of, the complexities in the process. The insight into this problem that you reflected at the hearing is that neither "side" in the debate is making a genuine effort to solve the problem of complexity—and thus delay—in capital cases. The reason is simple. Both sides in the debate profit from complexity. Defense lawyers favor complexity because they often can take advantage of it to keep their cases going. On the other hand, states attorneys favor the existing complexities because, by creating procedural obstacles, to habeas cor-

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I ask unanimous consent that there be 90 minutes equally divided and controlled for the debate on the pending amendment; that no other amendments or motions be in order prior to the disposition of the Durenberger amendment.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, I further ask unanimous consent the time starting on the Durenberger amendment be at 2:25 and that at the opening of the Senate at 2:15 Senator DANFORTH be recognized for a time not to exceed 10 minutes.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, finally, I want to clarify, on the issue of the motions included in the consent request, they do not include motions to table.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. KENNEDY. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 2:15 P.M.

Mr. KENNEDY. Mr. President, according to the previous order I move the Senate stand in recess until the hour of 2:15.

The motion was agreed to and, at 12:27 p.m., the Senate recessed until 2:15 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. BRYAN].

The PRESIDING OFFICER. Under the previous order, the Senator from Missouri [Mr. DANFORTH] is recognized for a period not to exceed 10 minutes.

CLARENCE THOMAS AT THE EEOC

Mr. DANFORTH. Mr. President, I am sure that in the next 2 months much attention will be focused on Clarence Thomas' chairmanship of the EEOC. Because Judge Thomas spent 8 years in that office, his stewardship deserves careful attention. Surely, each of us should take the time to learn about the Thomas era at the EEOC. What kind of chairman was he? What was the Commission like before he took office, and what is it like today? What do its employees say about his chairmanship, and what does his tenure at the EEOC tell us about Clarence Thomas as a person?

In order to learn the answers to these questions, I decided to find out for myself. I went to the EEOC headquarters, met with people who had worked with Clarence Thomas, walked the corridors and formed a clear impression of Clarence Thomas, the Chairman. Today, I would like to share my observations with the Senate, and to suggest that other interested Senators do what I did—go to the EEOC headquarters and see for yourselves.

While at the headquarters, I had the opportunity to speak with a wide variety of individuals. They were male and female, black, white, and Hispanic, able bodied and visibly disabled. Most held managerial or professional responsibilities. One was a maintenance man in green overalls. One was a driver for the Commission. They shared a common commitment to the mission of their agency: To ensure equal employment opportunities for all Americans. All had worked with Clarence Thomas. Some had served at the Commission years before the beginning of the Thomas era.

The clear message of those I visited was that Clarence Thomas had transformed the EEOC from the dregs of the Federal bureaucracy to an efficiently operating agency which was effectively performing the duties Congress had assigned to it. The present Chairman, Evan Kemp, said that until Clarence Thomas took over, the agency was generally considered to be, in his word, a "joke," and that Thomas had transformed it into a first-class agency, equal to two others where he had worked, the Internal Revenue Service and the Securities and Exchange Commission.

This observation was shared by others at the Commission. A white male attorney who has been with the EEOC since 1974, told me that Clarence Thomas "brought us from an also ran agency to the first tier." He said that in the old days, management of the Commission was not always held accountable. He added that in the Thomas regime, "When I made hard decisions, judgments were made on the merits. Politics did not enter in." A woman, with the Commission since 1979 said, "Today, people respect the EEOC. * * * (Thomas) worked very hard to improve the quality of the staff."

A black woman told me that under Clarence Thomas, "Computers started appearing all over the agency." She said that on days when employees had to work until 2 a.m., Clarence Thomas would be there.

The financial management system of the Commission before the Thomas regime was described as "a mess" before Clarence Thomas arrived. Clarence Thomas cleaned up the mess, according to a black female manager.

One of the most telling statements was made by a 51-year-old white male manager who had been with the EEOC for 21 years. He described himself as "a liberal, life-long Democrat who had never voted for a Republican in my life." He said, "Clarence Thomas brought the agency into the modern age. At the time he came, we couldn't tell you what cases we had. He put in place a tracking system. We increased the number of cases, and reduced the time for them. I never had interference with how I handled cases. He made us proud to work here."

I specifically inquired about age discrimination that had lapsed because the statute of limitations had run. I was told that these cases amounted to about 0.2 to 0.3 of 1 percent of the case load, that they never would have been discovered but for the computer program installed by Chairman Thomas, and that when Mr. Thomas heard that age discriminations cases had lapsed, he "saw red." One employee said that, "the suggestion that the lapse was intended has no basis in fact."

A blind attorney, with the EEOC, who now heads the litigation program, said, "I feel personally offended at the unfounded oriticism" of Chairman Thomas.

The esprit de corps of the agency was described by an attorney with the Commission, a black woman recruited by Chairman Thomas in 1985. "He told me he wanted to move the agency forward, to attract really good people. He had the highest integrity. He had a high tolerance for disagreement."

Even more illuminating than accounts of the Thomas management of EEOC were the statements made about the personal qualities of the Chairman. Several employees said that the Chairman was personally involved in making the Commission's new headquarters building accessible to the disabled. One person said that Clarence Thomas learned enough sign language so that he could encourage the hearing impaired. Another said that when her son was injured in a football accident, the Chairman came to her office to find out how he was doing, and gave her the name of his own physician. He later "kept coming down" to inquire about his condition.

A long-term black employee who had worked for Martin Luther King said that Chairman Thomas would bring young employees to see her, and would say, "Willie, tell them about Dr. King."

When I asked about the charges some have made that Clarence Thomas has lost sight of his own experience with segregation, and that he lacked feeling for those who came after him, a black maintenance man expressed his feelings most eloquently, and without words. He simply looked at me. Then

slowly, deliberately, he turned both thumbs down.

A number of employees of the EEOC thought it important to describe Clarence Thomas' last day as Commission Chairman. They told of hundreds of employees standing in the lobby in tears to say goodbye. When he walked out the door, one middle-aged woman followed him outside, tears streaming down her face.

The headquarters building of the EEOC has since been named the Clarence Thomas Building. A plaque honoring him is fixed to the lobby wall, its words composed, not by the members of the Commission, but by the employees:

Clarence Thomas, Chairman of the U.S. Equal Employment Opportunity Commission, May 17, 1982—March, 1990, is honored here by the Commission and its employees with this expression of our respect and profound appreciation for his dedicated leadership exemplified by his personal integrity and unwavering commitment to freedom, justice, equality of opportunity and to the highest standards of Government service.

TITLE X—PREGNANCY COUNSELING ACT

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Under the previous agreement, the pending amendment is amendment No. 754, offered by the senior Senator from Minnesota [Mr. DURENBERGER], subject to a 90-minute time agreement, controlled in the usual form.

The Senator from Minnesota [Mr. DURENBERGER] is recognized.

Mr. DURENBERGER. Mr. President, the Chair has stated the pending business, and for those of our colleagues who may not have been here when I proposed the amendment, it is an amendment to a substitute proposed earlier in the day by my colleague from Rhode Island, Senator CHAFEE.

We have a unanimous-consent agreement to confine the debate to 90 minutes, 45 of which I will not take, but at least I will begin to explain the purpose of this amendment. But I will do it, Mr. President, in the context of family planning.

I thought it appropriate that before we get into the emotional details of this debate—and whether debate is emotional or not, the issue certainly is—it is important to address some very basic facts and history about what the title X program is. We need to understand what we are dealing with before we decide how it should work.

Title X is a section of the Public Health Service Act, and that ought to tell us something right there. Title X is part of a national effort in this country at promoting and improving public health.

There can be no more central concern for government or for individuals than the health of its citizens, and yet we struggle each year here to find adequate resources for public health. I have been part of that struggle, as have Senator KENNEDY and Senator HATCH in the Labor Committee and Senators HARKIN and SPECTER, the leaders on the Appropriations Committee.

The full name for title X is the Population Research and Voluntary Family Planning Program. The purpose of the program is to provide information and contraceptives to people in order to prevent unwanted pregnancies.

I suppose at one point in time, before I reached this Chamber, that basic purpose was a controversial purpose. But to the vast majority of Americans today Government helping young women to avoid a pregnancy they do not desire and are unprepared for is a good idea and it is tax money well spent.

Title X today provides grants to about 4,000 family planning sites around America. They serve about 4 million women, most of whom are lower income. The core services which these facilities provide are the following: Contraceptive information, contraceptive services, gynecological examinations including basic lab and screening tests such as for cervical cancer, sexually transmitted disease detection, natural family planning instruction, infertility services, and pregnancy testing.

Given the alarming statistics we see about lack of access to health services among lower income women, title X fills an important hole in our public health system. Medicaid, the maternal and child health block grant, and social services block grant, as well as State and locally provided funds, augment this effort. But as the Infant Mortality Commission, the Pepper Commission, and many other studies have shown, many Americans are falling though the cracks.

In part due to various controversies which have become attached to the program, funding today is $18 million less than it was in 1981. When you put that in constant dollars, that is a 50-percent reduction in our Federal commitment to family planning and all of the related services I have just listed.

I ask, Mr. President, is there any person on this floor who believes that family planning is less important today than it was a decade ago? We ought to be spending twice as much, not half as much, on family planning.

Millions of women who need these kinds of services are simply not getting them because there just is not enough to go around. For every 1 woman served, there are probably 10 unserved. And what happens to them? Many of them end up delivering low-birthweight children, populating our neonatal intensive care units in hospitals all over America. Some of them have short, painful, but expensive lives which devastate their parents and burden the community. To my mind, Mr. President, an equally tragic event, many of those unwanted pregnancies end in abortion.

Mr. President, title X is a vitally important program. It deserves greater support than it gets around here. It deserves far more funding than it receives around here. That is my objective in offering the amendment before us, to find a way to steer title X around all of the controversies which have surrounded it ever since I came to this Chamber. And the way we can do that is to agree to a compromise between the extreme positions in this debate.

I propose that we split the difference between what the Supreme Court erroneously said the title X regulations meant in the Rust decision and what the groups supporting the Chafee bill say they should mean. It is an effort to make title X the best public health bill that it can be. Then we can win bipartisan support for family planning and press on to get the funding it deserves.

The purpose of this amendment is simple: To get pregnant women as quickly as possible into the setting where they can get the best and most comprehensive advice possible. My amendment ensures that women who discover they are pregnant at title X family planning clinics are immediately referred to experts for prenatal care, experts for counseling concerning their options.

The Chafee amendment has no such guarantee. To the contrary, under the Chafee substitute, we can be sure that many women will get pregnancy advice from people who are not qualified to give it.

Unfortunately, the heated rhetoric surrounding the program has often obscured the common purpose we all share: That women receive quality health care. I hope this amendment will serve to lower the volume of the rhetoric of the debate and turn our attention to where it belongs, to ensure that we facilitate continuity of health care when a woman is pregnant. For at that point, there are two patients, a mother and her child.

Mr. President, we need to focus on the limited scope of the Title X Program. Let us be clear. It is not a full service health care program. It is a preventive preconception program. Services in the program include preconceptional counsel, education, and general reproductive health care. In essence, once a women is diagnosed as pregnant, she does not belong in the Title X Program anymore.

When a person's general practitioner discovers a serious condition, they normally refer the patient to a specialist who is more competent to treat the condition. That is exactly what my amendment proposes: When a title X facility has a client or a walk-in client who is pregnant, they must refer that woman to a facility that is expert in

lied forces successfully, and with few allied casualties, pushed back Saddam Hussein's military occupation of Kuwait. The allies are now taking on the enormous task of restoring the devastated State of Kuwait. Mr. President, the outcome of the allied force's victory could have been immensely different were it not for the 1981 Israeli attack on Iraq's growing nuclear capability. We owe a long overdue show of gratitude to the State of Israel for the prudent action it took 10 years ago.

The potential of an Iraqi nuclear threat to Israel and surrounding Arab states in 1981 was growing. Experts determined that in 1 to 3 years Iraq would have gained a nuclear threat capability. Iraq possessed the delivery capability with its jet bombers, and short-range and surface-to-surface missiles. If Israel had not taken preventative action against Iraq at Osirak to end Iraq's nuclear threat, the United States and the allied forces could have lost the war, or worse, lost an unthinkable amount of lives to a nuclear attack.

If the United States has learned one thing from this war with Iraq, it is that the threats of a dictator should be taken to heart. Saddam Hussein's naked aggression brought him into Kuwait. As we now know, he would have used any means possible to bomb Israel and the other Arab States, as he threatened to do before and during the invasion of Kuwait. Saddam did not hesitate to send Scud missiles into Israel in an unprovoked attack on innocent civilians. Israel showed great restraint during those attacks in January and February. The course of the war might have been very different if Israel has responded to these attacks with a show of force instead.

The time has come for the United States to seek to repeal the U.N. Security Council Resolution 487, which wrongly condemns Israel's attack on Iraq to prevent their nuclear aspirations. This action not only safeguarded Israel and the United States from a nuclear threat but the allied states as well. Thus, the Congress should also encourage the other nations in the alliance to join the United States in repealing this resolution, and show their appreciation for Israel's past action.

The ACTING PRESIDENT pro tempore. The Senator from California.

Mr. CRANSTON. I thank the Senator from Pennsylvania for his collaboration with me on the Veterans' Affairs Committee in exploring what can be done to deal with the post traumatic stress disorder that is prevalent among an unknown number of veterans at the present time, stemming from the Iraq war. I look forward to oollaborating with the Senator on that front as we collaborated on many fronts.

MOTOR VOTER REGISTRATION

Mr. CRANSTON. Mr. President, I rise very briefly to urge an aye vote on cloture and support for the motor voter registration bill that is about to come before us in the form of a cloture vote. We stand for democracy in the world. We should stand for democracy at home.

Registration barriers against voting were enacted in our country after the Civil War as part of an effort to keep blacks and poor people from voting in our country. At that time registration, literacy tests, poll taxes were enacted. They had the effect of keeping people from voting. They were used deliberately for that purpose. In the civil rights days earlier in this century, when Lyndon Johnson was in the White House, we got rid of the poll tax, we got rid of literacy tests. We did not get rid of registration. It deliberately was created as a barrier to voting. It still is used deliberately in some parts of our country as a barrier to voting. In other places it is entirely inadvertent.

Registration may serve a useful purpose in making certain that only people vote who are entitled to vote under the law and the processes of our country. But we should make it much simpler for people to register so they oan register without having difficulties in doing so. This measure before us would do exactly that. It would make it possible for people, when getting a driver's license, to simply say they would like to be registered, indicate the party, and they would become registered. That would, apparently, oover about 90 percent of the eligible voters in our country.

The other 10 percent would be registered by what is called agency-based registration, which is also proposed and covered in this law, where they congregate in unemployment lines to get unemployment insurance or to discuss their Social Security problems. They would be given a very easy opportunity to register at that stage.

I urge that this be done. It will strengthen our democracy and it will show when we demand democracy and the right to vote in the Soviet Union and other countries, we are also sincere about making that right possible for people here in the United States.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The time for morning business has expired.

EXTENSION OF MORNING BUSINESS

Mr. THURMOND. Mr. President, I ask unanimous oonsent that morning business be extended 3 more minutes.

Mr. KENNEDY. Reserving the right to object, will the Senator state his request again?

The ACTING PRESIDENT pro tempore. The Senator is requesting morning business be extended 3 minutes and the vote for cloture be therefore set aside. Is there objection?

Mr. FORD. Reserving the right to object, we have had chairmen who have delayed their committee hearings to vote at 10 o'clock. We have many Senators here who want to vote at 10 o'clock. I hope that no other Senator will ask to extend the time because then I will have to object. I will not object to 3 minutes. I hope the Senator will finish in 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from South Carolina is recognized for 3 minutes.

NOMINATION OF JUDGE CLARENCE THOMAS TO THE SUPREME COURT

Mr. THURMOND. Mr. President, in the near future, the Senate Judiciary Committee will begin hearings on Judge Clarence Thomas for a position on the U.S. Supreme Court. I anticipate that the hearings will be thorough, comprehensive and, at times, contentious.

As we prepare for this hearing, it is important to note that Judge Thomas is not an unknown quantity, having been confirmed by the Senate on four occasions. He was before the committee just 15 months ago, at which time, a complete review of his background, qualifications and professional experience was undertaken. Judge Thomas was overwhelmingly approved by the full Senate for a position on the U.S. Circuit Court for the District of Columbia.

Currently, certain individuals and organizations have raised ooncerns about Judge Thomas. I believe much of the current opposition is based on the ideology, or judicial philosophy, that these individuals and groups believe Judge Thomas will apply if confirmed to the Supreme Court. Because so much has been said about the question of philosophy, or ideology, I want to comment about this issue within the context of the nominating process.

Some argue that philosophy should not be considered at all in the nomination process, while others state that philosophy should be the sole criteria. It is not appropriate that philosophy alone should bar a nominee from the Supreme Court unless that nominee holds a belief that is so contrary to the fundamental, longstanding principles of the Nation that his or her service would be inconsistent with the essence of this country's shared values. I believe it is inappropriate to reject a nominee based on philosophy alone as there are numerous other relevant fac-

tors that should be considered in reviewing a Supreme Court nominee.

Mr. President, if a philosophical litmus test can be applied to defeat a nominee, then the independence of the Federal judiciary would be undermined. Judges are not politicians who are put in place to decide cases based on the views of a political consistency, but are sworn to apply constitutional and legal principles to arrive at decisions that do justice to the parties before them.

It has been said that since the President uses philosophy to select a nominee, the Senate can use philosophy to evaluate one. A corollary statement should be just as true: when the President does not use philosophy solely to choose his nominee, the Senate should not use philosophy solely to rejeot that nominee. Historically, Presidents do consider philosophy when appointing nominees to the Supreme Court. That is part of our system of Government; it is the manner in which the American people have an opportunity to influence the Court which so greatly affects them.

The issue of philosophy is not a new one for the Senate Judiciary Committee. In prior disoussions regarding a Supreme Court nominee, a prominent member of the oommittee, a Democrat, stated:

> It is offensive to suggest that a potential Justice of the Supreme Court must pass some presumed test of judicial philosophy. It is even more offensive to suggest that a potential Justice must pass the litmus test of any single-issue interest group.

Another prominent Democrat stated:

> Our examination of [this nominee's] judicial philosophy, that is relevant and important, but we should not condition our confirmation on her agreement with any opinions of ours, so long as her philosophy is within the norms set down by the Constitution itself.

In closing, no nominee should have to pass the litmus test of any particular group. The prerogative to choose a nominee to the Supreme Court belongs to the President—an individual elected by the people of this country. It is important to insure that a nominee possesses the intellectual capacity, competence, and judicial temperament to serve on our Nation's highest court. A Supreme Court Justice, or any other judge, for that matter, cannot be expected to make rulings based on the expectations of any political constituency. To do so would seriously jeopardize the efficacy and independence of the Federal judiciary.

THE TITLE X PREGNANCY COUNSELING ACT

Mr. KERRY. Mr. President, I rise today to express my support for S. 323, the Title X Pregnancy Counseling Act of 1991 which was passed yesterday by the Senate. I am proud to be a strong supporter and cosponsor of this vital legislation.

This bill will overturn the Supreme Court's affirmation of the Bush administration's regulations prohibiting recipients of Federal family planning grant funds from advising pregnant women that one of their options for dealing with pregnancy is pregnancy termination. In my judgment, no one should ever make a decision lightly or hastily to terminate a pregnancy. Such a decision should be reached only based on very careful thought and reflection. However, after much careful study, I remain committed to the position that no one ultimately is better able, and no one has a more compelling right, than a pregnant woman to choose if she wishes to have a child. I believe it follows naturally that physicians and family planning counselors should be permitted to include among the options they present to pregnant women the option of pregnancy termination—which is wholly legal in the United States under conditions enunciated by the Supreme Court.

While I consider freedom of choice to be critical to the health and well-being of the women of this Nation, I find equally troubling the free-speech restraints imposed by the Rust versus Sullivan decision upholding the Department of Health and Human Service's so-called gag rule. The most serious implications of the Rust decision lay in its blatant disregard for first amendment rights. Despite the Court's tortuous reading that the regulations do not force the title X grantee to give up its right of free speech, Justice Blackmun's dissent is absolutely correct. He says, "The majority professes to leave undisturbed the free speech protections upon which our society has come to rely, but one must wonder what force the first amendment retains if it is read to countenance the deliberate manipulation by the Government of the dialog between a woman and her physician." First amendment free speech rights are the most sacred of all the rights guaranteed by our Nation's Constitution. A woman's consultation with her physician must be considered among the most private types of speech protected by the first amendment. If the Federal Government is allowed to restrict the content of this type of speech, then certainly the potential for further intrusions into the private lives of American citizens is great. Today, we have an opportunity to stop the recent trend of increasing restrictions on civil rights by the Bush administration and the Supreme Court. We must act with conviction.

Finally, I am concerned for the physicians of America if the Bush administration's gag rule is allowed to stand. A doctor has a moral and ethical responsibility to give full and informed advice to his or her patients. I have received numerous letters and calls from physicians throughout the State of Massachusetts who are deeply concerned that their ability to perform what they consider to be their ethical duty, giving the full range of medical advice to their patients, will be impaired by the Rust decision. S. 323 will remove that impairment.

Failure of the Congress to resolve this matter will result in a two-tiered health care system. Those pregnant women who can afford private physicians will have no trouble receiving counseling on the full range of legal options available to them regarding their pregnancies. Low-income pregnant women who cannot afford private physicians will be restricted to just those options approved by the Government. Such a situation would be horribly unjust and must not be permitted.

A TRIBUTE TO ROBERT MOTHERWELL

Mr. METZENBAUM. Mr. President, our Nation has lost one of the great artists of this country, who was awarded the President's Award just last year in the White House. My wife and I were there.

Robert Motherwell has left the scene. He was one of the true giants of modern American art. He was a very caring, concerned individual. Whenever he knew there was a problem, Robert Motherwell wanted to be there to be helpful to do what he could to make this world a little bit better place in which to live.

Robert Motherwell died yesterday at age 77.

His impact and influence cannot be overestimated. He will be remembered by history as a brilliant and thoughtful philosopher, an eloquent and insightful writer, an important and provocative political thinker, and most of all, a master painter and an artist whose collages were once called perhaps the most consistently beautiful body of work produced by any artist at that time.

He inspired a generation, and has given pleasure to millions. From Dusseldorf, Stockholm, and Vienna to Washington, Los Angeles, and New York, art lovers bore witness as Robert Motherwell's work broke startling new ground and changed the shape of expressionist art.

From the moment he seized the world's attention in 1941 with his painting "The Little Spanish Prison," through his revolutionary contribution to the abstract expressionist movement, and until the very day this week that his creative energies ceased, Motherwell has remained a oornerstone of his profession, and a treasure to this Nation.

His achievements are too numerous to catalog. His 1965 retrospective at the museum of modern art, his mural com-

CLARENCE THOMAS AND NATURAL LAW

Mr. DANFORTH. Mr. President, opponents of the Clarence Thomas nomination have taken his views of natural law out of context in an effort to portray the judge's position as turning the clock back on constitutional interpretation. In particular, they have extracted a single sentence from a single, lengthy speech, and they have transformed that sentence into what it was never intended to be: A sweeping statement of jurisprudence, foretelling his opinion of Roe versus Wade and other issues. They have created a straw man that never existed, and dramatically knocked it down.

What Clarence Thomas has said about natural law has been almost always in the context of civil rights. This was certainly the case in his speech to the Heritage Foundation from which his often quoted reference to Lewis Lehrman was extracted. Mr. President, I ask unanimous consent that a copy of the Heritage Foundation speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

WHY BLACK AMERICANS SHOULD LOOK TO CONSERVATIVE POLICIES

(By Clarence Thomas)

Much has been said about blacks and conservatism. Those on the Left smugly assume blacks are monolithic and will by force of circumstances always huddle to the left of the political spectrum. The political Right watches this herd mentality in action, concedes that blacks are monolithic, picks up a few dissidents, and wistfully shrugs at the seemingly unbreakable hold of the liberal Left on black Americans. But even in the face of this, a few dissidents like Tom Sowell and J.A. Parker stand steadfast, refusing to give in to the cult mentality and childish obedience that hypnotize black Americans into a mindless, political trance. I admire them, and only wish I could have a fraction of their courage and strength.

Many pundits have come along in recent years, who claim an understanding of why so many blacks think right and vote left. They offer "the answer" to the problem of blacks failing to respond favorably to conservatism. I, for one, am not certain there is such a thing as "the answer." And, even if there is, I assure you I do not have it.

I have only my experiences and modest observations to offer. First, I may be somewhat of an oddity. I grew up under state-enforced segregation, which is as close to totalitarianism as I would like to get. My household, notwithstanding the myth fabricated by experts, was strong, stable, and conservative. In fact, it was far more conservative than many who fashion themselves conservatives today. God was central. School, discipline, hard work, and knowing right from wrong were of the highest priority. Crime, welfare, slothfulness, and alcohol were enemies. But these were not issues to be debated by keen intellectuals, bellowed about by rousing orators, or dissected by pollsters and researchers. They were a way of life; they marked the path of survival and the escape route from squalor.

FAMILY POLICY, NOT SOCIAL POLICY

Unlike today, we debated no one about our way of life—we lived it. I must add that my grandparents enforced the no-debate rule. There were a number of concerns I wanted to express. In fact, I did on a number of occasions at a great price. But then, I have always found a way to get in my two cents.

Of course, I thought my grandparents were too rigid and their expectations were too high. I also thought they were mean at times. But one of their often stated goals was to raise us so that we could "do for ourselves," so that we could stand on our "own two feet." This was not their social policy, it was their family policy—for their family, not those nameless families that politicians love to whine about. The most compassionate thing they did for us was to teach us to fend for ourselves and to do that in an openly hostile environment. In fact, the hostility made learning the lesson that much more urgent. It made the difference between freedom and incarceration; life and death; alcoholism and sobriety. The evidence of those who failed abounded, and casualties lay everywhere. But there were also many examples of success—all of whom, according to my grandfather, followed the straight and narrow path. I was raised to survive under the totalitarianism of segregation, not only without the active assistance of government but with its active opposition. We were raised to survive in spite of the dark oppressive cloud of governmentally sanctioned bigotry. Self-sufficiency and spiritual and emotional security were our tools to carve out and secure freedom. Those who attempt to capture the daily counseling, oversight, common sense, and vision of my grandparents in a governmental program are engaging in sheer folly. Government cannot develop individual responsibility, but it certainly can refrain from preventing or hindering the development of this responsibility.

NO PRESCRIPTION FOR SUCCESS

I am of the view that black Americans will move inexorably and naturally toward conservatism when we stop discouraging them; when they are treated as a diverse group with differing interests; and when conservatives stand up for what they believe in rather than stand against blacks. This is not a prescription for success, but rather an assertion that black Americans know what they want, and it is not timidity and condescension. Nor do I believe gadget ideas such as enterprise zones are of any consequence when blacks who live in blighted areas know that crime, not lack of tax credits, is the problem. Blacks are not stupid. And no matter how good an idea or proposal is, no one is going to give up the comfort of the leftist status quo as long as they view conservatives as antagonistic to their interest, and conservatives do little or nothing to dispel the perception. If blacks hate or fear conservatives, nothing we say will be heard. Let me relate my experience as a designated black/conservative/Republican/Reagan appointee in the civil rights area—our soft underbelly as far as our opponents are concerned.

I begin by noting that there was much that many of us who have been in this Administration since the beginning could and should have done. This is at least as true for me as for anyone else. For example, I believe firmly that I should have taken a more aggressive stand against opponents of free enterprise and opponents of the values that are central to success in this society. For me, even more important, I should have been more aggressive in arguing my points with fellow members of the Administration and with those who shared my political and ideological bent. With that said, let us take a look at my perception of the past six years.

HIGH HOPES

In 1980 when Ronald Reagan was elected, I was a staffer for Senator John Danforth of Missouri. After the election, Thomas Sowell called to invite me to a conference in San Francisco, later named the Fairmont Conference. It was his hope, and certainly mine, that this conference would be the beginning of an alternative group—an alternative to the consistently leftist thinking of the civil rights and the black leadership. To my knowledge, it was not intended that this group be an antagonist to anyone, but rather that it bring pluralism to the thinking and to the leadership of black Americans. At the conference at the Fairmont Hotel in San Francisco, there was much fanfare, considerable media coverage, and high hopes. In retrospect, however, the composition of the conference, the attendees, and their various motives for being there should have been an indication of the problems we would encounter in providing alternative thinking in our society. Some of us went because we felt strongly that black Americans were being fed a steady diet of wrong ideas, wrong thinking, and certainly nothing approaching pluralism. There were some others, however, who appeared there solely to gain strategic political position(s) in the new Administration. This would be the undoing of a great idea. But even so, hopes were high, expectations and spirits were high, and morale was high. For those of us who had wandered in the desert of political and ideological alienation, we had found a home, we had found each other. For me, this was also the beginning of public exposure that would change my life and raise my blood pressure—and anxiety level. After returning from San Francisco, the Washington Post printed a major op-ed article about me and my views at the Fairmont Conference. Essentially, the article listed my opposition to busing and affirmative action as well as my concerns about welfare. The resulting outcry was consistently negative.

CASTIGATED AND RIDICULED

Many black Republicans with whom I had enjoyed a working and amicable relationship on Capitol Hill were now distant, and some were even hostile. Letters to the Editor castigated and ridiculed me. I was invited to a panel presentation by one organization, "Black Women's Agenda," and scolded by none other than then Congressman Harold Washington of Chicago. Although initially shocked by the treatment I received, my spirits were not dampened. I was quite enthusiastic about the prospects of black Americans with different ideas receiving exposure. It was in this spirit in 1981 that I joined the Administration as an Assistant Secretary in the Department of Education. I had, initially, declined taking the position of Assistant Secretary for Civil Rights simply because my career was not in civil rights and I had no intention of moving into this area. In fact, I was insulted by the initial contact about the position as well as my current position. But policies affecting black Americans had been an all-consuming interest of mine since the age of 16.

I always found it curious that, even though that my background was in energy, taxation, and general corporate regulatory matters, I was not seriously sought after to move into one of those areas. But be that as it may, I was excited about the prospects of influenc-

ing change. The early enthusiasm was incredibls. We had strategy meetings among blacks who were interested in approaching the problems of minorities in our society in a diffsrent way—among blacks who saw the mistakes of the past and who were willing to admit error and redirect tbeir energies in a positive way. There was also considerable interest (among some white organizations) in black Americans who thought differently. But, by and large, it was an opportunity to be excited about the prospects of the future—to be excited about the possibilities of changing the course of history and altering the direction of social and civil rights policies in this country. Of course, for much of the media and for many organizations, we were mere curiosities. One person asked rhetorically, "Why do we need blacks thinking like whites?" I saw the prospects of proselytizing many young blacks who, like myself, had been disenchanted with the Left; disenchanted with the so-called black leaders; and discouraged by the inability to effect change or in any way influence the thinking of black leaders in the Democratic Party.

HONEYMOON OVER

But all good things must come to an end. During my first year in the Administration, it was clear that the honeymoon was over. The emphasis in the area of civil rights and social policies was decidedly negative. In the civil rights arena, we began to argue consistently against affirmative action. We attacked welfare and the welfare mentality. These are positions with whioh I agree. But, the emphasis was unnecessarily negative. It had been my hope and continues to be my hope that we would espouse principles and policies whioh by their sheer force would preempt welfare and race-couscious policies.

The winds were not taken out of our sails, however, until early 1982 when we changed positions in the Supreme Court to support a tax exemption for Bob Jones University which had been previously challenged because of certain racial policies. Although the point being made in the argument that the administrative and regulatory arm of government should not make policies through regulations was a valid point, it was lost in the overall perception that the racial policies of Bob Jones University were being defended. In addition, the perception that the Administration did not support an extension of the Voting Rights Act aggravated our problems.

I was intrigued by several events that surrounded both the Bob Jones decision and the handling of the Voting Rights Act. As you probably remember, the decision to change positions in the Bob Jones University was made public on Friday afternoon simultaneously with the AT&T breakup. On the following Monday, I expressed grave concerns in a previously scheduled meeting that this would be the undoing of those of us in the Administration who had hoped for an opportunity to expand the thinking of and about black Americans. A fellow member of the Administration said rather glibly that, in two days, the furor over Bob Jones would end. I responded that we had sounded our death knell with that decision. Unfortunately, I was more right than he was.

With respect to the Voting Rights Act, I always found it intriguing that we consistently claimed oredit for extending it. Indeed, the President did sign it. Indeed, the President did support the extension of the Voting Rights Act. But by failing to get out early and positively in front of the effort to extend the Act, we allowed ourselves to be put in the position of opposing a version of the Voting Righte Act that was unacceptable, and hence we allowed the perception to be created that this Administration opposed the Voting Rights Act, not simply a version of it.

MY FRIEND ATTACKED

Needless to say, the harangues to which we were subjected privately, publicly, and in all sorts of forums were considerable after these two policy decisions. There was no place that any of us who were identified as black conservatives, black Republicans, or black members of the Administration could go without being virtually attacked and certainly challenged with respect to those two issues specifically and the Administration generally. I remember a very good friend of mine complaining to me that he had been attacked simply for being my friend. Apparently the attack was so intense he simply left the event he was attending. They also made his date leave.

If that were not enough, there was the appearance within the conservative ranks that blacks were to be tolerated but not necessarily welcomed. There appeared to be a presumption, albeit rebuttable, that blacks could not be conservative. Interestingly, this was the flip side of the liberal assumption that we consistently challenged: that blacks were characteristically leftist in their thinking. As such, there was the constant pressure and apparent expectation that even blacks who were in the Administration and considered conservative publicly had to prove themselves daily. Hence, in challenging either positions or the emphases on policy matters, one had to be careful not to go so far as to lose his conservative credentials—or so it seemed. Certainly, pluralism or different points of view on the merits of these issues was not encouraged or invited—especially from blacks. And, if advice was given, it was often ignored. Dissent bore a price—one I gladly paid. Unfortunately, I would have to characterize the general attitude of conservatives toward black conservatives as indifference—with minor exceptions. It was made clear more than once that, since blacks did not vote right, they were owed nothing. This was exacerbated by the mood that the electoral mandate required a certain exclusivity of membership in the conservative ranks. That is, if you were not with us in 1976, do not bother to apply.

For blacks the litmus test was fairly clear. You must be against affirmative action and against welfare. And your opposition had to be adamant and constant or you would be suspected of being a closet liberal. Again, this must be viewed in the context that the presumption was that no black could be a conservative.

CARICATURES AND SIDESHOWS

Needless to say, in this environment little or no effort was made to proselytize those blacks who were on the fence or who had not made up their minds about the conservative movement. In fact, it was already hard enough for those of us who were convinced and converted to survive. And, our treatment certainly offered no encouragement to prospective converts. It often seemed that to be accepted within the conservative ranks and to be treated with some degree of acceptance, a black was required to become a caricature of sorts, providing sideshows of anti-black quips and attacks. But there was more—much more—to our concerns than merely attacking previous policies and so-called black leaders. The future, not the past, was to be influenced.

It is not surprising, with these attitudes, that there was a general refusal to listen to the opinions of black conservatives. In fact, it appeared often that our white counterparts actually hid from our advice. There was a general sense that we were being avoided and circumvented. Those of us who had been indentified as black conservatives were in a rather odd position. This caused me to reflect on my college years. The liberals, or more accurately, those on the Left spent a great deal of time, energy, and effort recruiting and proselytizing blacks by playing on the ill treatment of black Americans in this country. They would devise all sorte of programs and protests in which we should participate. But having observed and having concluded that these programs and protests were not ours and that they were not in the best interest of black Americans, there was no place to go. There was no effort by conservatives to recruit the same black students. It seemed that those with whom we agreed ideologically were not interested and those with whom we did not agree ideologically persistently wooed us. I, for one, had the nagging suspicion that our black counterparts on the Left knew this all along and just sat by and waited to see what we would do and how we would respond. They also knew that they could seal off the credibility with black Americans by misstating our views on civil rights and by fanning the flames of fear among blacks. That is precisely what they did.

ASSURING ALIENATION

I failed to realize just how deep-seated the animosity of blacks toward black conservatives was. The dual labels of black Republicans and black conservatives drew rave reviews. Unfortunately the raving was at us, not for us. The reaction was negative, to be euphemistic, and generally hostile. Interestingly enough, however, our ideas themselves received very positive reactions, especially among the average working-class and middle-class black American who had no vested or proprietary interest in the social policies that had dominated the political scene for the past 20 years. In fact, I was often amazed with the degree of acceptance. But as soon as Republican or conservative was injected into the conversation, there was a complete about face. The ideas were okay. The Republicans and conservatives, especially the black ones, were not.

Our black counterparts on the Left and in the Democratic Party assured our alienation. Those of us who were identified as conservative were ignored at best. We were treated with disdain, regularly castigated, and mocked; and of course we could be accused of anything without recourse and with impunity. I find it intriguing that there has been a recent chorus of pleas by many of the same people who castigated us, for open-mindedness toward those black Democrats who have been accused of illegalities or improprieties. This open-mindedness was certainly not available when it came to accusing and attacking black conservatives, who merely had different ideas about what was good for black Americans and themselves.

IDEOLOGICAL LITANY

The flames were further fanned by the media. I often felt that the media assumed that, to be black, one had to espouse leftist ideas and Democratic politics. Any black who deviated from the ideological litany of requisites was an oddity and was to be out from the herd and attacked. Hence, any disagreement we had with black Democrats or those on the left was exaggerated. Our char-

acter and motives were impugned and challenged by the same reporters who supposedly were writing objective stories. In fact, on numerous occasions, I have found myself debating and arguing with a reporter, who had long since closed his notebook, put away his pen, and turned off his tape recorder. I remember one instance when I first arrived at the Department of Education, a reporter, who happened to be white, came to my office and asked: "What are you all doing to cut back on civil rights enforcement?" I said, "Nothing! In fact, here is a list of all the things we are doing to enforce the law properly and not just play numbers games." He then asked, "You had a very rough life, didn't you?" To this, I responded that I did not; that I did indeed come from very modest circumstances but that I had lived the American dream; and that I was attempting to secure this dream for all Americans, especially those Americans of my race who had been left out of the American dream. Needless to say, he wrote nothing. I have not always been so fortunate.

BURYING POSITIVE NEWS

There was, indeed, in my view, a complicity and penchant on the part of the media to disseminate indiscriminately whatever negative news there was about black conservatives and ignore or bury the positive news. It is ironic that six years ago, when we preached self-help, we were attacked *ad infinitem*. Now it is common among the black Democrats to act as though they have suddenly discovered our historical roots and that self-help is an integral part of our roots. We now have permission to talk about self-help. The media were also recklessly irresponsible in printing unsubstantiated allegations that portrayed us as anti-black and anti-civil rights.

Unfortunately, it must have been apparent to the black liberals and those on the Left that conservatives would not mount a positive (and I underscore positive) civil rights campaign. They were confident that our central civil rights concern would give them an easy victory since it was confined to affirmative action—that is being against affirmative action. They were certain that we would not be champions of civil rights or would not project ourselves as champions of civil rights. Therefore, they had license to roam unfettered in this area claiming that we were against all that was good and just and holy, and that we were hell bent on returning blacks to slavery. They could smirk at us black conservatives because they felt we had no real political or economic support. And, they would simply wait for us to self-destruct or disappear, bringing to an end the flirtation of blacks with conservatism.

Interestingly enough, I had been told within the first month of going to the Department of Education in 1981 that we would be attacked on civil rights and that we would not be allowed to succeed. It was as though there was a conspiracy between opposing ideologies to deny political and ideological choices to black Amsricans. For their part, the Left exacted the payment of a very high price for any black who decided to venture from the fold. And among conservatives, the message was that there is no room at the inn. And if there is, only under very strict conditions.

CONSERVATIVES MUST OPEN THE DOOR

It appears that we are welcomed by those who dangled the lure of the wrong approach and we are discouraged by those who, in my view, have the right approach. But conservatives must open the door and lay out the welcome mat if there is ever going to be a chance of attracting black Americans. There need be no ideological concessions, just a major attitudinal change. Conservatives must show that they care. By caring I do not suggest or mean the phony caring and tear-jerking compassion being bandied about today. I for one, do not see how the government can be compassionate, only people can be compassionate and then only with their own money, their own property, or their own effort, not that of others. Conservatives must understand that it is not enough just to be right.

But what is done is done. Let's be blunt. Why should conservatives care about the number of blacks in the Party? After all, it can be argued that the resources expended to attract black votes could be spent wooing other ethnic groups or other voters to vote Republican.

I cannot resist adding in passing that the RNC, which pays itself hefty bonuses, to blow opportunities can scarcely claim lack of resources.

SEARCH FOR STANDARDS

I believe the question of why black Americans should look toward conservative policies is best addressed as part of the general question, why any American should look toward conservative policies. Conservatism's problem and the problem of the post-Reagan Republican Party, the natural vehicle for conservatism, is making conservatism more attractive to Americans in general. In fact, our approach to blacks has been a paradigm of the Republican Party as a whole. The failure to assert principles—to say what we are "for"—plagued the 1986 campaign. Everyone was treated as part of an interest group.

Blacks just happened to represent an interest group not worth going after. Polls rather than principles appeared to control. We must offer a vision, not vexation. But any vision must impart more than a warm feeling that "everything is just fine—keep thinking the same." We must start by articulating principles of government and standards of goodness. I suggest that we begin the search for standards and principles with the self-evident truths of the Declaration of Independence.

Now that even Time magazine has decided to turn ethics into a cover story, there is at least some recognition that a connection exists between natural law standards and constitutional government. Abraham Lincoln made the connection between ethics and politics in his great pre-Civil War speeches. Lincoln was not only talking about the immediate issue of the spread of slavery but also about the whole problem of self-government, of men ruling others by their consent—and the government of oneself. Thus, almost 130 years ago Lincoln felt compelled to correct the erroneous reading set out in the Dred Scott decision:

"They [the Founding Fathers] did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact, they had no power to confer such a boon. They meant simply to declare the right so that the enforcement of it might follow as fact as circumstances should permit. They meant to set up a standard maxim for free society, which should be familiar to all and revered by all; constantly looked to, constantly labored for, and even though never perfectly attained, constantly approximated, and therefore constantly spreading and deepening its influence, and augmenting the happiness and value of life to all people of all colors everywhere."

REEXAMINING NATURAL LAW

We must attempt to recover the moral horizons of these speeches. Equality of rights, not of possessions or entitlements, offered the opportunity to be free, and self-governing.

The need to reexamine the natural law is as current as last month's issue of Time on ethics. Yet it is more venerable than St. Thomas Aquinas. It both transcends and underlies time and place, race and custom. And until recently, it has been an integral part of the American political tradition. Martin Luther King was the last prominent American political figure to appeal to it. But Heritage Foundation Trustee Lewis Lehrman's recent essay in The American Spectator on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law.

Briefly put, the thesis of natural law is that human nature provides the key to how men ought to live their lives. As John Quincy Adams put it:

"Our political way of life is by the laws of nature of nature's God, and of course presupposes the existence of God, the moral ruler of the universe, and a rule of right and wrong, of just and unjust, binding upon man, preceding all institutions of human society and of government."

Without such a notion of natural law, the entire American political tradition, from Washington to Lincoln, from Jefferson to Martin Luther King, would be unintelligible. According to our higher law tradition, men must acknowledge each other's freedom, and govern only by the consent of others. All our political institutions preeuppose this truth. Natural law of this form is indispensable to decent politics. It is the barrier against the "abolition of man" that C.S. Lewis warned about in his short modern classic.

This approach allows us to reassert the primacy of the individual, and establishes our inherent equality as a God-given right. This inherent equality is the basis for aggressive enforcement of civil rights laws and equal employment opportunity laws designed to protect individual rights. Indeed, defending the individual under these laws should be the hallmark of conservatism rather than its Achilles' Heel. And in no way should this be the issue of those who are antagonistic to individual rights and the proponents of a bigger more intrusive government. Indeed, conservatives should be as adamant about freedom here at home as we are about freedom abroad. We should be at least as incensed about the totalitarianism of drug traffickers and criminals in poor neighborhoods as we are about totalitarianism in Eastern bloc countries. The primacy of individual rights demands that conservatives be the first to protect them.

RESPONSIBILITIES OF FREEDOM

But with the benefits of freedom come responsibilities. Conservatives should be no more timid about asserting the responsibilities of the individual than they should be about protecting individual rights.

This principled approach would, in my view, make it clear to blacks that conservatives are not hostile to their interests but aggressively supportive. This is particularly true to the extent that conservatives are now perceived as anti-civil rights. Unless it is clear that conservative principles protect all individuals, including blacks, there are no programs or arguments, no matter how brilliant, sensible, or logical, that will attract blacks to the conservative ranks. They may take the idea and run, but they will not stay and fraternize without a clear, prin-

cipled message that they are welcome and well protected.

Mr. DANFORTH. Mr. President, no one who takes the time to read this lengthy speech could conceivably conclude that it is a speech about abortion, or about Roe versus Wade, or about when life begins. That is, quite frankly, a ludicrous interpretation of the speech. No straight-faced first-year law student would make such a suggestion.

But, to lay the question completely at rest, I asked Judge Thomas what he intended to say. I asked him whether he intended to apply natural law theory to abortion, or to comment on Roe versus Wade, or to express some theory on the beginning of life. His answer was absolutely no. There was no such intention in his remarks. Judge Thomas assured me that he has not prejudged any case that might come before the Supreme Court, and that he has formulated no views on the relationship between natural law and abortion.

The single sentence from which so much has been made was, in fact, a throwaway line. It was a good word about Lewis Lehrman, uttered in a place known as the Lehrman Auditorium to an organization where Lewis Lehrman is a trustee. It is the kind of compliment uttered by Members of the Senate every day, and to make it into a full-blown jurisprudence is not unlike turning a reference to "my distinguished colleague" into a full-fledged endorsement of everything your colleague has ever said.

The speech at the Heritage Foundation is not about abortion. It is about race. It is about the experience of being a black conservative. Especially, it is a chastisement of white conservatives for their negative position on civil rights. Clarence Thomas went to a conservative audience and told them that a strong position on civil rights was both necessary to win black voters and consistent with conservative philosophy. And in making that argument, he referred, as he has often done, to the concept of natural law embodied in the Declaration of Independence.

Natural law, as it has been expounded by Clarence Thomas in several speeches and law review articles, has been related almost entirely to the principle of equality found in the Declaration of Independence. Thomas believes that this principle of equality, which antedates the Constitution, must inform our understanding of what the Constitution means.

The heart of the Thomas argument is in the lines of the Declaration memorized by every school child:

We hold these truths to be self evident, that all men are oreated equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness.

Thomas believes that the "self-evident" truth of equality underpins the Constitution and must inform constitutional interpretation.

Clarence Thomas, a black man who has felt the sting of segregation and the legacy of slavery, has spent a great deal of time wondering how a nation founded on the principle that all men are created equal could have countenanced the existence of slavery and segregation.

As he stated in a 1987 speech honoring Martin Luther King's birthday, the Declaration of Independence "does not say all white men, but it says all men, which includes black men. It does not say all Gentiles, but it says all men, which included Jews. It does not say all Protestants, but it says all men, which includes Catholics." This is an issue of fundamental concern to a man who lived in a segregated regime "until the beginning of [his adult] life." Mr. President, I ask unanimous consent that a copy of this speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

THE CALLING OF THE HIGHER LAW

ADDRESS BY THE HONORABLE CLARENCE THOMAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ON THE OCCASION OF THE MARTIN LUTHER KING, JR., HOLIDAY DELIVERED AT THE U.S. DEPARTMENT OF JUSTICE, JANUARY 16, 1987

Let me begin by noting the date, which I will paraphrase in the last words of the original Constitution, since this is the year of its Bicentennial. We meet today, January 16, in the Year of our Lord, one thousand nine hundred aud eighty-seven and of the Independence of the United States of America the two hundredth and eleventh. I mark the date in this way, for the holiday we celebrate brings out the peculiar tie between these two great documents of our political tradition.

The controversy surrounding the Martin Luther King, Jr., holiday can be something positive if it makes us think about why we should honor him. Our most important national holiday is of course the Fourth of July, but that appears to have become "shorn of its vitality and practical value" as a President as long ago as Abraham Lincoln feared it would be. I hope that the following comments might be worthy not only of the man we celebrate today but might make some contribution toward a more vital, valuable, and thoughtful celebration of the Fourth, and of the Bicentennial of the Constitution in general.

As Americans, we can be partisan on many different issues, but, as Americans, we must be non-partisan and in fundamental agreement on certain others. Holidays including such a one as this should be occasions on which we can see what we have in common with each other, rather than dwell on what divides us. Appropriately, Dr. King's greatest speeches were those associated with another controversial figure who also brought about for us unity on the highest basis—Abraham Lincoln. Let us reflect for a moment on Dr. King's speech at Lincoln University and of course on his Lincoln Memorial speech, on the occasion of the great march on Washington.

It is here that Dr. King's confidence in America shines forth the strongest. He was at his best when he emphasized that the civil rights movement would succeed only if it made use of the strengths of American society, only if it brought out what was best about America, and made America live up to what was highest in it. To denounce America as corrupt, or sick, or wicked, was to cast away the greatest resource the civil rights movement and its successors have—the innate justice of the Constitution and the fundamental decency of the American people.

In his June, 1961 commencement address at Lincoln University, Dr. King captured well the utopianism of America: ". . . in a real sense, America is essentially a dream, a dream as yet unfulfilled. It is a dream of land where men of all races, of all nationalities and of all creeds can live together as brothers. The substance of the dream is expressed in these sublime words, words lifted to cosmic proportions 'We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness.'"

The man who would later speak of having a dream went on to reflect that the Declaration speaks of not some men, but of all men. "It does not say all white men, but it says all men, which includes black men. It does not say all Gentiles, but it says all men, which includes Jews. It does not say all Protestants, but it says all men, which includes Catbolics." Because all men are created equal, and one is neither the natural nor the God-annointed ruler of the other, men can rule each other only through mutual consent. Consent requires expression through representative institutions, and this in turn implies broad suffrage, fixed terms of office, and separation of powers, not only to insure that the granted powers are not abused but that government has sufficient power to perform its necessary tasks. Both slavery and its surrogate segregation—which I lived under until the beginning of my adult life—denied Southern blacks inclusion in the scheme of the Declaration.

Two years after the Lincoln University speech, at the Lincoln Memorial, Dr. King would describe the Declaration and the Constitution as a "promissory note to which every American was to fall heir." But despite the bad check America had written black Americans, he refused to believe that the "bank of justice" was bankrupt. He knew that the resources of America were great because the dream he had of a nation where his children would be judged not "by the color of their skin but by the content of their character" was "deeply rooted in the American dream."

Dr. King gave us more to think about concerning the source of his confidence in his 1963 book, "Why We Can't Wait." Here, citing Thomas Aquinas, he notes that "An unjust law is a human law that is not rooted in eternal law and natural law." But "a just law is a man-made oode that squares with the moral law or the law of God." This theme of a higher law behind the positive law is one that we today, we lawyers, we citizens who believe in the rule of law, and we who honor Martin Luther King need to take more seriously. For, as he maintained, American politics and the American Constitution are unintelligible without the Declaration of Independence, and the Declaration of Independence, and the Declaration is unintelligible without the notion of a higher law by which we fallible men and women can take our bearings.

So when we use the standard of "original intention," we must take this to mean the

Constitution in light of the Declaration. The Attorney General was careful to do this in his Constitution Day Speech in 1985, and I hope he continues to stress this essential connection throughout the Bicentennial Year. Those of us who are attorneys and all of us who deal with the law as professionals—not to mention our status as citizens under the law—must keep in mind that all the technical training we have is in the services of those enduring ideals. Of course there will be dispute about the proper interpretation of those ideals, and their application in a particular circumstance, and so forth. Democratic government and the majority rule behind it allow such disputes to be judged in a rational way. But majorities can themselves abuse power; they are legitimate majorities only insofar as they comply with the higher law background of the Constitution. Thus, completely consistent are strict obedience to the law and Dr. King's civil disobedience on behalf of a higher law, against segregation statutes.

With this theme of higher law in mind, let me make a few remarks to my fellow conservatives, many of whom have deep reservations about honoring Dr. King. We have to remember that he was only 39 when he was assassinated. Those of us who lived through the craziness of the sixties—perhaps contributing a little to it ourselves—but are still alive and have matured enough to realize our follies should not be so fast to attack Dr. King. We conservatives must recall that our political success came about only after the major civil rights legislation was passed, and the political agenda shifted such that people could call themselves conservatives with full confidence that they were not countenancing racism.

All conservatives should realize and constantly articulate the central importance of moral consensus in order to have any kind of common society, let alone a decent one. The prevalent moral skepticism, that dogmatic skepticism that refuses to question its own pig-headed insistence on moral relativism, threatens to destroy all decency in society and then dissolve society itself. How can it be that bigotry and tolerance are moral equivalents?

To counter such relativism, we, in this Bicentennial Year, should seek to renew our understanding of the natural law foundations of our Constitution. For Abraham Lincoln, the Declaration's teaching on human equality was "the father of all moral principle." Such confidence enabled the survival of this nation; it must once again be renewed so we can face today's dangers.

Conservatives in particular can benefit a great deal by serious reflection on the central place of the Declaration of Independence's "laws of nature and of nature's God." I give this advice because conservatives, I believe, more than those of other political persuasions have far more to offer Americans of all colors. Yet conservatives can learn a lesson from Dr. King. To give some examples: Surely the free market is the best means for all Americans, in particular those who have faced legal discrimination, to acquire wealth. Yet the marketplace guarantees neither justice nor truth. After all, slaves or drugs can be bought and sold. The defense of the equal opportunity to compete in a free market is a moral one that presupposes the Declaration. And Martin Luther King was fighting for that goal.

Let me cite another example of how conservative thought is deficient on an issue related to race, namely that of South Africa. No one who holds American principles dear can defend apartheid. One might even defend a form of despotism which ultimately benefited those under harsh and arbitrary rule. But no one has shown how apartheid improves those under its sway, economic benefits of living in South Africa to the contrary. In defense of South Africa, some may argue that the alternative is the black tyrannies of the rest of Africa. But not all of black Africa is tyrannical, as the Secretary of State's recent trip indicates. More to the point, the voice of the of the black tyrannies of Africa is essentially the same as that of South Africa. Both despotisms rest on premises which are ultimately traceable to nineteenth-century notions about evolution and their concomitant denial of natural rights as the basis of decent political order. The black tyrannies' rules are indoctrinated in Marxism—which they learned at British, French, and American universities. Marxism claims to be a science which gives absolute rules about human behavior and well-being. Apartheid too is based on what claims to be a science, derived as well from nineteenth-century notions of racial evolution. The English historian Paul Johnson describes the cultivation of this pseudo/science, which is rooted in reality as witchcraft, in his fascinating study of the twentieth century's assault on human freedom, "Modern Times." Both Marxism and apartheid are opposed to the American notion of equal natural rights. Marxism posite a master class, apartheid a master race. One is socialism of the left, the other socialism of the right. Dr. King's emphasis on the Declaration reminds us why we have to be opposed to both. The Declaration's standards are difficult ones to live up to, but they are the right response to our current nihilistic skepticism. Yet, nationalistic pride in having them is immediately sobered by our immense responsibility in abiding by them.

Conservatives need the Declaration's high standards to give them perspective, to make them approach politics with the proper idealism and the necessary humility. The American political writer Tom Paine is frequently quoted by President Reagan, much to the discomfort of some of his fellow conservatives. Paine declared, "We have it within our power to begin the world over again." That remains the revolutionary meaning of America. Politics is not for the purpose of gaining a temporary advantage, a chance to distribute the perquisites of power. It is not for the purpose of preserving an eetablished order or of seeking to reinvent the wheel. In striving to preserve and bring about what is good, politics must measure itself by the standards of the higher law, of natural rights, or else it becomes part of the problem instead of part of the solution.

Having come so far in eliminating legal discrimination, we cannot fall into the trap of thinking that equal natural rights is mere rhetoric, a cloak for crass self-interest, that allows interests to be defined racially. A nation that is not based on race, that takes its bearings by standards that transcend race and apply to all humanity is what our fundamental ideals demand. This American challenge is one that must be the conservative challenge, too. And I have complete confidence that the means we conservatives possess are superior in meeting this great challenge.

To illustrate how Dr. King's focus on the Declaration might be applied today, in the area of civil rights, let us consider, once again Justice Harlan's dissent in the 1896 case of *Plessy* v. *Ferguson*, which legitimated segregation. Harlan's ringing dissent is of course known for its invocation of the color-blind Constitution. I want to reflect briefly on the substance of what Harlan argued, rather than on what has almost become a mere rhetorical slogan.

Harlan makes the following arguments against State-imposed segregation and for a color-blind reading of the Constitution. First, the Thirteenth and the Fourteenth Amendments strike down "Badges of Slavery" as well as the institution itself. Second, segregation constitutes an unreasonable infringement of personal freedom. Harlan implies that there is a private sphere which government must respect. Third, segregation is inconsistent with the original Constitution's guarantee to each state of a republican form of government. Referring to the argument of the Fourteenth Amendment as a whole, including its privileges and immunities clause, Harlan made constant reference to the duties of citizenship, and the rights they purchase.

This is what stands behind the Slogan "color-blind Constitution." The phrase refers to rights and duties, citizenship, and the distinction between a private and a public sphere. This latter argument against segregation is one we today should re-examine with care. Let us not forget that segregation is an extension of that despotic relationship of master to slave. Both slavery and segregation found support in the scientific doctrines of the nineteenth century, which found their basis in Darwinism. These ideologies held that there was no fixed, constant human nature, and a posteriori no natural rights on which to base one's political and moral life. Justice was to be found in the struggle of men, races, and nations. And with the abolition of nature and natural rights one throws out as well limited government and all the institutions which accompany it—written Constitutions, separate courts, fixed terms of office, and so on. Let us not forget that slavery and segregation were attempts to abolish or inhibit the private sphere, in the name of another private attribute, that of race. Paramount is a state-mandated set of institutions and practices. No one who truly believes in limited Government could possibly have a favorable word to say about segregation. Therefore, I applaud the Justice Department in making it clear that racial assaults will not be tolerated in this society.

Re-examining Dr. King in this way opens wounds that many of us hoped had long since healed. But it is too easy for some to forget what many, including myself have experienced—segregated restaurants, water fountains, and entrances, even in this very city, and assaults on blacks for attempting to register to vote, not to mention numerous other injustices and indignities. One might profit from a comparison of King in the segregation crisis—for example, that experienced in the Depression. The New Deal was the moderate response to that crisis—with Communism and fascism being the extreme responses. Dr. King's extremism may well have been the only moderate response to the rule of segregation.

Now today we must still question aspects of the New Deal, yet Franklin D. Roosevelt remains as popular as ever, as attested by the frequency with which President Reagan invokes his name. It is not inappropriate for us conservatives to make a similar comparison; let us honor Martin Luther King today, the same way we can admire Franklin Roosevelt. This does not oblige us conservatives to affirm all the actions either man undertook, but we can still honor them for heroism in dealing with the crises they faced.

Some of you may want to know how this understanding of Dr. King and the American political tradition relates to my responsibilities as Chairman of the Equal Employment Opportunity Commission. The Commission's offices are just up the hill from the Lincoln Memorial, and we draw inspiration from his words and those that King spoke there. A brief quotation from Lincoln explains it all very elegantly. In response to the just-announced Dred Scott decision that claimed the Constitution affirmed the right to own slaves, Lincoln argued that the Declaration of Independence "intended to include all men, but they did not intend to declare all men equal in all respects. . . . They defined with tolerable distinctness, in what respects they did consider all men created equal—equal in "certain unalienable rights, among which are life, liberty, and the pursuit of happiness. This they said, and this [they] meant. They did not mean to assert the obvious untruth, that all were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no power to confer such a boon. They meant simply to declare the right, so that the enforcement of it might follow as fast as circumstances should permit."

The EEOC is an enforcement agency which, under this Administration and Commission, is dedicated to protecting individual rights. Vigorous protection of individual rights does not require the imposition of quotas or racial preference or the creation of group rights. But a rejection of group classifications and remedies does not mean shrinking from zealous enforcement of the law. This approach to enforcement has its foundation in the Declaration and follows in the tradition of Dr. King. And I would dare-say it has its roots in the higher law.

Some of you may think I have been avoiding reference to recent race-related controversies. What relevance to these is Dr. King's significance, as I have been articulating it? In this Bicentennial year, the most significant thing we can do to improve our character as a people, and thereby perfect our relations with one another, is for our youth, still in school, to give the Declaration of Independence and Constitution a serious reading. This does not require additions to school budget, more computer terminals, or touchy-feely psychology courses. It does require the conviction that something worthwhile is to be found in those documents. If the Martin Luther King holiday can somehow lead our youth to take the fundamental laws of the land seriously, the way the Founders intended them, then its presence on our calendars is a fitting preface to our celebration next month of Washington and Lincoln, and for the entire Bicentennial year. Next month when you read or re-read the Farewell Address and the Gettyshurg Address and the Second Inaugural, remember that the heritage they formed lives on in the words and deeds of the Reverend Martin Luther King.

Mr. DANFORTH. Mr. President, in examining the apparent contradiction between the stated goals of the Declaration and the reality experienced by blacks in this country, Thomas focused on two Supreme Court decisions that legitimated the twin evils of slavery and segregation, the Dred Scott decision and the Plessy versus Ferguson decision. Clarence Thomas believes that these cases were wrongly decided. In the words of a Harvard professor recently published in the Wall Street Journal, Thomas believes that the Justices in these cases failed to read the Constitution in light of the "moral aspirations toward liberty and equality announced in the Declaration of Independence."

In order to make this argument, Thomas asserts two propositions: First, the principles of the Declaration of Independence are embedded in the Constitution; and second, those principles should have dictated a different result in Dred Scott and Plessy versus Ferguson.

Thomas begins this effort by invoking Lincoln's criticism of the Dred Scott decision. As Thomas states in an article in the Harvard Journal of Law and Public Policy:

> Without the guidance of the Declaration of Independence, Lincoln explained, the Constitution can be a mask for the most awful tyranny, and not just over a particular race. With the Declaration as a backdrop, we can understand the Constitution as the Founders understood it—to point toward the eventual abolition of slavery.

In the same Harvard article, Thomas made clear that the two documents must be read together:

> If the Constitution is not a logical extension of the principles of the Declaration of Independence, important parts of the Constitution are inexplicable. One should never lose sight of the fact that the last words of the original Constitution as written refer to the Declaration of Independence, written just 11 years earlier.

And that is the quote from Judge Thomas.

Thomas believes that the principle of equality embedded in the Constitution required a different result in Dred Scott and the Plessy decision. In a Howard Law Journal article, Thomas revealed much of his purpose in exploring natural law: "Our task as defenders of constitutional government and the heritage that is indispensable to its perpetuation require us to challenge the Dred Scott decision." In the same article, Thomas argues that Justice Harlan's dissent, not the majority, had it right in Plessy. According to Thomas and Justice Harlan, the majority erred when it held that the 13th amendment and 14th amendment did not make State-imposed segregation unconstitutional. According to Thomas, Justice Taney in Dred Scott and Justice Brown in Plessy misunderstood the Constitution because they failed to understand it as the "fulfillment of the ideas of the Declaration of Independence, as Lincoln, Frederick Douglass, and the Founders understood it."

Thomas believes that the effect of the Supreme Court's misunderstanding is not simply limited to misguided constitutional analysis in the 20th century. Thomas believes that it forced the Warren Court to base its Brown versus Board of Education decision on unnecessarily weak grounds. According to Thomas in his Howard Law Journal article, "(t)he great flaw of Brown is that it did not rely on Justice Harlan's dissent in Plessy * * *. Thus, the Brown focus on environment overlooks the real problem with segregation, its origin in slavery, which was at fundamental odds with the founding principles." Clarence Thomas supports the holding in Brown, but he believes that the decision should have been written in even stronger terms than those used by Chief Justice Warren. He has described his critique as "Monday morning quarterbacking" of Justice Warren's reasoning.

It is in this context that Judge Thomas discusses his views on natural law. He believes that the Constitution cannot be understood in all its richness without reference to the principles and ideals embodied in the Declaration of Independence. It is a view, I believe, shared by a vast majority of Americans.

Therefore, I believe that the reoord is clear. Judge Thomas has cited natural law in connection with his keen interest in the issue of oivil rights and race relations in this country. He has stressed that the notion of equality and liberty undoubtedly held by the Founders should have precluded the misguided decision in Dred Scott and Plessy versus Ferguson. He also believes that the mistakes made by the Court in these decisions continue to have an impact in present-day thinking about race relations. He has not extended this theory in any of the radical ways insinuated by his opponents, and in my view, it is insulting to imply that he has done so.

TREASURY, POSTAL SERVICE, EXECUTIVE OFFICE OF THE PRESIDENT AND INDEPENDENT AGENCIES APPROPRIATIONS, FISCAL YEAR 1992

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, could I understand the parliamentary situation? What is exactly our parliamentary situation?

The PRESIDING OFFICER. The Senator from Massachusetts controls 26 minutes, 9 seconds, the Senator from Kansas 9 minutes, 17 seconds on the amendment as offered by the Senator from Kansas and others.

Mr. KENNEDY. After expiration of time on the amendment of the Senator from Kansas, what will be the next order of business?

The PRESIDING OFFICER. When all time is used pursuant to the previous unanimous consent, the Senate will return to amendment 780 as offered by Senator HELMS relating to child pornography. Then there will be a vote on amendment No. 734, again as offered by the Senator from North Carolina, rel-

closings into an opportunity for those affected. In short, the legislation turns the closed bases over to the communities free of charge, and allows the individuals, families, and local business community to direct and receive the economic potential of what in most cases is prime real estate.

The approached envisioned by the Roth-Breaux base conversion bill has now been embraced by the Base Closure and Realignment Commission which only 2 weeks ago issued its report to the President. The Commission's conclusion is that:

Reusing former military base property offers communities the best opportunity to rebuild their economies.

And this is exactly what Roth-Breaux offers—it offers these communities first choice of the installation.

For example, a community that stands to lose an air base will be able to convert it into a much needed airport, rather than have the property go first to the Federal Government to be used as a prison or a nuclear waste site. Giving communities the first right to lands in question will facilitate their economic rebound.

However, Mr. President, there is one more important step that Congress can take to improve the opportunity created by base conversions. Toward this end, Senator BREAUX and I have introduced legislation, S. 1498, that will provide tax incentives to encourage individuals who have been adversely affected by a base closing to participate in the conversion process and the emergence of the subsequent industry or commercial use of the property.

For the communities involved, our legislation provides the State and local governments the ability to issue industrial development bonds, or IDB's, of a tax-free basis so the local governments increase their ability to attract businesses to the areas in transition. For the businesses, our bill provides tax incentives for them to locate and expand their operations in these areas. And for individuals, our proposal offers a tax credit to offset wages lost by a base closing.

These incentives include wage credits, faster depreciation, and expensing provisions. Combined, these are strong market incentives for businesses to both hire area workers who have lost their jobs and to invest their capital in the area to provide new growth and new jobs. Coupled with the transfer of land to the community, the potential economic loss from closing a base instead becomes fertile ground for economic growth.

I am a believer in the market economy, and I feel this bill to provide tax credits and incentives for development is the best method by which to help these areas recover from the economic effects of losing a military installation. Along with the base conversion bill, these measures will allow us to take the necessary steps toward meeting our Nation's changing needs and realizing the full benefits that are possible in the post-cold-war era.

Mr. ROTH. I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLARENCE THOMAS—A REMARKABLE MAN

Mr. DANFORTH. Mr. President, as the Senate prepares to take up the confirmation of Judge Clarence Thomas, Senators will be considering not only the career of this remarkable man, but his entire person. Senators will want to know both what he has done and who he is.

One measure of who he is is what he has said about his own life, about his experiences and what they have meant to him as he has developed his own outlook on the world. I have had the remarkable opportunity of accompanying Judge Thomas on each of his visits to Members of the Senate. I wish I could capture the warmth of the man and the moving vignettes he has described from his own life's history.

Fortunately, the New York Times included on its op-ed page on July 17, 1991, a speech by Clarence Thomas at Savannah State College.

I commend this speech to the Senate as an example of how Clarence Thomas looks at his own life and at the world around him.

Mr. President, I ask unanimous consent that the op-ed piece from the New York Times be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 17, 1991]

CLIMB THE JAGGED MOUNTAIN

(By Clarence Thomas)

(Following are excerpts from a commencement speech that Clarence Thomas, President Bush's nominee to the Supreme Court, gave at Savannah State College on June 9, 1985.)

I grew up here in Savannah. I was born not far from here (in Pinpoint). I am a child of those marshes, a son of this soil. I am a descendant of the slaves whose labors made the dark soil of the South productive. I am the great-great-grandson of a freed slave, whose enslavement continued after my birth. I am the product of hatred and love—the hatred of the social and political structure which dominated the segregated, hate-filled city of my youth, and the love of some people—my mother, my grandparents, my neighbors and relatives—who said by their actions, "You can make it, but first you must endure."

You can survive, but first you must endure. You can live, but first you must endure. You must endure the unfairness. You must endure the hatred. You must endure the bigotry. You must endure the indignities.

I stand before you as one who had the same beginning as yourselves—as one who has walked a little farther down the road, climbed a little higher up the mountain. I come back to you, who must now travel this road and climb this jagged, steep mountain that lies ahead. I return as a messenger—a front-runner, a scout. What lies ahead of you is even tougher than what is now behind you.

That mean, callous world out there is still very much filled with discrimination. It still holds out a different life for those who do not happen to the right race or the right sex. It is a world in which the "haves" continue to reap more dividends than the "have-nots."

You will enter a world in which more than one-half of all black children are born primarily to youthful mothers and out of wedlock. You will enter a world in which the black teenage unemployment rate as always is more than double that of white teenagers. Any discrimination, like sharp turns in a road, becomes critical because of the tremendous speed at which we are traveling into the high-tech world of a service economy.

There is a tendency among young, upwardly mobile, intelligent minorities to forget. We forget the sweat of our forefathers. We forget the blood of the marchers, the prayers and hope of our race. We forget who brought us into this world. We overlook who put food in our mouths and clothes on our backs. We forget commitment to excellence. We procreate with pleasure and retreat from the responsibilities of the babies we produce.

We subdue, we seduce, but we don't respect ourselves, our women, our babies. How do we expect a race that has been thrown into the gutter of socio-economic indicators to rise above these humiliating circumstances if we hide from responsibility for our own destiny?

The truth of the matter is we have become more interested in designer jeans and break dancing than we are in obligations and responsibilities.

We have lost something. We look for role models in all the wrong places. We refuse to reach back in our not too distant past for the lessons and values we need to carry us into the uncertain future. We ignore what has permitted blacks in this country to survive the brutality of slavery and the bitter rejection of segregation. We overlook the reality of positive values and run to the mirage of promises, visions and dreams.

I dare not come to this city, which only two decades ago clung so tenaciously to segregation, bigotry and I remember businesses on East Broad and West Broad that were run in spite of bigotry. It is said that we can't learn because of bigotry. But I know for a fact that tens of thousands of blacks were educated at historically black colleges, in spite of discrimination. We learned to read in spite of segregated libraries. We built homes in spite of segregated neighborhoods. We learned how to play basketball (and did we ever learn!), even though we couldn't go to the N.B.A.

Over the past 15 years, I have watched as others have jumped quickly at the opportunity to make excuses for black Americans. It is said that blacks cannot start businesses because of discrimination. But Jim Crowism, to convince you of the fairness of this society. My memory is too precise, my recollection too keen, to venture down that path of self-delusion. I am not blind to our history—nor do I turn a deaf ear to the pleas and cries

of black Americans. Often I must struggle to contain my outrage at what has happened to black Americans—what continues to happen—what we let happen and what we do to ourselves.

If I let myself go, I would rage in the words of Frederick Douglass: "At a time like this, scorching irony, not convincing argument, is needed. Oh! Had I ability, and could reach the nation's ear, I would today pour out a fiery stream of biting ridicule, blasting reproach, withering sarcasm and stern rebuke. For it is not light that is needed, but fire; it is not the gentle shower, but thunder. We need the storm, the whirlwind and the earthquake."

I often hear rosy platitudes about this country—much of which is true. But how are we black Americans to feel when we have so little in a land with so much? How is black America to respond to the celebration of the wonders of this grsat nation?

In 1964, when I entered the seminary, I was the only black in my class and one of two in the school. A year later, I was the only one in the school. Not a day passed that I was not pricked by prejudice.

But I had an advantage over black students and kids today. I had never heard any excuses made. Nor had I seen my role models take comfort in excuses. The women who worked in those kitchens and waited on the bus knew it was prejudice which caused their plight, but that didn't stop them from working.

My grandfather knew why his business wasn't more successful, but that didn't stop him from getting up at 2 in the morning to carry ice, wood and fuel oil. Sure, they knew it was bad. They knew all too well that they were held back by prejudice. But they weren't pinned down by it. They fought discrimination under W. W. Law [a Georgia civil rights leader] and the N.A.A.C.P. Equally important, they fought against the awful effects of prejudice by doing all they could do in spite of this obstacle.

They could still send their children to school. They could still respect and help each other. They could still moderate their use of alcohol. They could still be decent, law-abiding citizens.

I had the benefit of people who knew they had to walk a straighter line, climb a taller mountain and carry a heavier load. They took all that segregation and prejudice would allow them and at the same time fought to remove these awful barriers.

You all have a much tougher road to travel. Not only do you have to contend with the ever-present bigotry, you must do so with a recent tradition that almost requires you to wallow in excuses. You now have a popular national rhetoric which says that you can't learn because of racism, you can't raise the babies you make because of racism, you can't get up in the mornings because of racism. You commit crimes because of racism. Unlike me, you must not only overcome the repressiveness of racism, you must also overcome the lure of excuses. You have twice the job I had.

Do not be lured by sirens and purveyors of misery who profit from constantly regurgitating all that is wrong with black Americans and blaming these problems on others. Do not succumb to this temptation of always blaming others.

Do not become obsessed with all that is wrong with our race. Rather, become obsessed with looking for solutions to our problems. Be tolerant of all positive ideas; their number is much smaller than the countless number of problems to be solved. We need all the hope we can get.

Most importantly, draw on that great lesson and those positive role models who have gone down this road before us. We are badgered and pushed by our friends and peers to do unlike our parents and grandparents—we are told not to be old-fashioned. But they have weathered the storm. It is up to us now to learn how. Countless hours of research are spent to determine why blacks fail or why we commit crimes. Why can't we spend a few hours learning how those closest to us have survived and helped us get this far?

As your front-runner, I have gone ahead and taken a long, hard look. I have seen two roads from my perch a few humble feet above the madding crowd. On the first, a race of people is rushing mindlessly down a highway of sweet, intoxicating destruction, with all its bright lights and grand promises constructed by social scientists and politicians. To the side, there is a seldom used, overgrown road leading through the valley of life with all its pitfalls and obstacles. It is the road—the old-fashioned road—traveled by those who endured slavery, who endured Jim Crowism, who endured hatred. It is the road that might reward hard work and discipline, that might reward intelligence, that might be fair and provide equal opportunity. But there are no guarantees.

You must choose. The lure of the highway is seductive and enticing. But the destruction is certain. To travel the road of hope and opportunity is hard and difficult, but there is a chance that you might somehow, some way, with the help of God, make it.

Mr. DANFORTH. In addition to the nominee's own reflections about himself, it is informative to see what others who have known him in the past have said about him. One recent example is the op-ed piece in the Washington Post on July 16, 1991, by my longstanding legislative director and staff director of the Senate Commerce Committee Allen Moore. Allen Moore and Clarence Thomas were colleagues in my Senate office from 1979 to 1981.

Mr. President, I ask unanimous consent that a copy of the op-ed piece written by Allen Moore be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, July 16, 1991]

THE CLARENCE THOMAS I KNOW

(By Allen Moore)

I have been reading and hearing a lot about Clarence Thomas these days. Some of it makes me wonder: Can this be the same Clarence Thomas who worked for me in Jack Danforth's office 12 years ago and has been my friend ever since?

The man I read about has been called an "arch-conservative" who has "forgotten where he came from," who believes "affirmative action is like heroin," whose seven years as chairman of the Equal Employment Opportunity Commission were "the most retrograde in its history," whose first marriage ended in a "messy divorce that deserves scrutiny," whose "opposition to abortion is well-known," whose "allegiance to the pope" should be examined, whose actions are "guided by political calculation," and who is "harshly judgmental and self-righteous rather than compassionate and empathetic."

The Clarence Thomas I know is a caring, decent, honest bright, good-humored, modest and thoughtful father, husband and public servant who has already come farther in 43 years than most of us will in a lifetime.

The president did his nominee no favor when he said race was not a factor in the nomination. Of course it was, and Thomas readily admits it, just as he acknowledges that race played a role in his selection for other jobs along the way. He has never denied his indebtedness to, or admiration for, those, such as Justice Thurgood Marshall, who helped open such doors. He does not blindly oppose the notion of taking race into consideration for hiring, promotion or admissions decisions. What he does oppose are rigid numerical goals and quotas, which he considers divisive and unfair.

When he gets a chance to fully explain his views in Senate hearings, he will challenge his listeners to think beyond platitudes and conventional orthodoxy. Clarence Thomas has always supported the idea of giving preferential treatment to the truly disadvantaged, especially minorities, rather than to those from middle- or upper middle-class backgrounds who happen to be members of a targeted minority group. To do otherwise risks stigmatizing those favored—to make it appear as if they are incapable of competing fairly. It also can put the unprepared in situations where they are destined to fail. "God helps those who help themselves," Clarence might say, encouraging self-help and self-reliance. Martin Luther King Jr., Malcolm X and Jesse Jackson have stressed such themes.

Regarding his feelings about the pope, I believe Clarence stopped being a practicing Catholic when he left the seminary almost 25 years ago. In recent years, he has attended a Methodist church, a Christian church and, most recently, an Episcopal church.

I don't know how he feels about abortion, but I would be very surprised if he didn't have an open mind on *Roe* v. *Wade*. Many liberals and conservatives on hoth sides of abortion issue acknowledge the vulnerability of that decision on purely legal grounds, but I personally wouldn't bet the ranch on how he would come down on the issue.

I know something about Thomas's first marriage because I spent many hours talking with him as it broke apart. He was tormented both about breaking his wedding vows and about the impact of the divorce on his young son. He sought me out for advice because I was a divorced father with two well-adjusted children. His divorce was handled amicably, with Clarence given undisputed primary custody of his son. Both parente have played a major role in his upbringing, and all parties have great respect for each other.

Clarence's record as EEOC chairman deserves close scrutiny, just as it did when he was renominated and reconfirmed for a second term as chairman, and just as it did when he was nominated and confirmed to his seat on the D.C. Circuit Court of Appeals. The record will speak for itself, but someone should also look inside the agency to find out how people feel about Thomas the man and the leader.

Evan Kemp, his successor as chairman, marvels at what Thomas did with a historically underfunded agency that saw its budget cut nine out of 10 times in the 1980s. (Usually Congress cut the president's request, then beats up the agency for its budget-related shortcomings.) Clarence Thomas inherited a poorly managed, dispirited agency whose employees were embarrassed to admit where they worked. His legacy, according to Kemp, is that employees are now proud to

work at the EEOC and even named the new headquarters building after him. Nonetheless, says Kemp, "Clarence won't get the credit that is his due; I will." People throughout the agency sing Thomas's praises—his dedication, his professional standards, his extraordinary sensitivity to and support of the "little people," and his inspiration to employees at all levels.

The suggestion that his actions have been politically motivated is laughable. This is not a political animal. His passionate, behind-the-scenes battles with the White House and Justice Department conservatives during the Reagan years were hardly politic. In addition, several times through the years, I strongly advised him to approach his detractors both on and off the Hill. "They attacked me without knowing the facts," he would say, "and it would be hypocritical to approach them." This is a man who advanced in a political environment in spite of, not because of, his political skills.

Perhaps the most absurd charge leveled at Thomas is that "he forgot where he came from." Thomas's professional and personal life, not to mention his conscience, wouldn't permit him to forget his roots if he wanted to. Neither would the world around him. After lunch a few weeks ago, he and I were strolling around downtown Washington. He suddenly realized he was late for an appointment and asked me (I'm white) to hail him a cab.

"I have trouble getting a cab downtown, and it's virtually impossible in Georgetown," he said, jumping into the taxi I had flagged down as the driver mouthed an obscenity in my direction.

Mr. DANFORTH. Mr. President, I suggest that absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum having been suggested, the clerk will call the roll.

The bill clerk proceeded to call the roll.

The PRESIDING OFFICER. Without objection, the quorum call is dispensed with.

THE 1991 MID-YEAR REPORT

The mailing and filing date of the 1991 Mid-Year Report required by the Federal Election Campaign Act, as amended, is Wednesday, July 31, 1991. All principal campaign committees supporting Senate candidates must file their reports with the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510-7116. Senators may wish to advise their campaign committee personnel of this requirement.

The Public Records Office will be open from 8 a.m. until 9 p.m. on the filing date for the purpose of receiving these filings. In general, reports will be available 24 hours after receipt. For further information, please do not hesitate to contract the Office of Public Records on (202) 224-0322.

TRIBUTE TO ARIZONANS WHO LOST THEIR LIVES IN THE PERSIAN GULF WAR

Mr. DECONCINI. Mr. President, Arizona has a long and distinguished history of military service by its citizens since territorial times. Throughout their history, Arizonans have proudly and unselfishly served from San Juan Hill to the Argonne, from Anzio to Midway, from Da Nang to Hue, in Grenada, in Panama, and most recently, in the conflict in the Persian Gulf. In each of these eras, Arizonans have made the ultimate sacrifice of their lives defending the ideals held dear by this Nation.

We can all rejoice in the swift military victory in the gulf with extremely low casualties, but we still mourn the loss of life by any American in service to his or her country. Words are of little comfort to grieving mothers, fathers, sons, daughters, wives, husbands or children. It is a stark fact that the loved family member is no longer with us. Only time can bring a measure of healing and acceptance.

While my heart is heavy with sadness, I am honored to recognize the five Arizonans who in the oft quoted and famous words of Abraham Lincoln gave "the last full measure of devotion—their lives—to preserve freedom."

Marine Lance Cpl. James B. Cunningham, who died in a tragic gunshot accident in Saudi Arabia;

Marine Pvt. Michael A. Noline, a member of the San Carolos Apache Tribe, who died in a raid near the Kuwaiti border;

Marine Lance Cpl. Eliseo Felix, an Hispanic youth who proudly served in the Marine Corps;

Marine Sgt. Aaron Pack, who was killed by enemy fire as United States troops swept into Kuwait to liberate that oppressed nation; and

Sgt. Dorothy Fails, a member of the Arizona National Guard's 1404th Transportation Company, who died in Saudi Arabia while performing her duty as a driver.

Our valiant troops can never be adequately praised or commended. They came from widely diverse backgrounds but were joined in a common cause—the defense of freedom—and were willing to sacrifice their lives in that pursuit. In death, these modern day patriots join the illustrious company of the heroes of past conflicts. These men and women served in the proudest tradition of those who have defended freedom since the birth of our Nation more than 200 years ago. I salute them and I extend my sincerest sympathy to their families and friends in this time of grief and loss.

REPRESENTATIVE JOE MOAKLEY SPEAKS AT THE UNIVERSITY OF CENTRAL AMERICA

Mr. DECONCINI. Mr. President, I read with great interest a speech delivered by Representative JOE MOAKLEY at the University of Central America in San Salvador, El Salvador on July 1, 1991. As you may recall, I have worked with Representative MOAKLEY for many years on the issue of providing temporary protected status to Salvadoran refugees here in the United States. I have strongly advocated this issue because I believe that we in this country have a responsibility to the victims of a civil war in which the U.S. Government has played a significant role. Representative MOAKLEY and I were finally able to see this legislation passed last year, and I again wish to thank my colleagues for supporting this humanitarian measure.

The speech, which I ask unanimous consent to be printed in the RECORD at the conclusion of my remarks, is a sensitive and moving statement on the need for true peace and justice for the long-suffering people of El Salvador. We in this body may disagree about the methods that have been used to influence the Salvadoran civil war, but we are of one mind when it comes to the fervent hope that the two sides to the conflict can settle their differences peacefully.

Representative MOAKLEY speaks with conviction, from his role as chairman of the Speaker's Task Force on El Salvador, about the significance of the case of the assassination of the Jesuit priests and their companions in November 1989. He states, and rightly so, that while we in the United States want to see justice achieved in this case, it is more important that the people of El Salvador know that justice will prevail and those who break the law, whatever their station in life, will be held accountable for their actions.

I applaud Representative MOAKLEY for his continued leadership on this important issue, and his balanced approach to it. I highly recommend his speech to my colleagues in the Senate.

There being no objection, the speech was ordered to be printed in the RECORD, as follows:

REMARKS OF REPRESENTATIVE JOE MOAKLEY

I. INTRODUCTION

I am honored to be here at this historic university and grateful for the kind invitation to speak to all of you this afternoon.

I am especially grateful to Father Estrada for his very flattering introduction. He represents the very best in the Jesuit tradition and has done a remarkable job of presiding over this very great university during these very difficult times.

I also want to thank Father Michael Czerny and my dear friend, Father Charlie Beirne, for their assistance in arranging today's speech. I am delighted, as well, to participate in a program with Father Jon Sobrino who has always been a strong defender of social justice.

And I want to thank Father Rodolfo Cardenal who has bravely agreed to translate my remarks. I just hope his Spanish has a Boston accent.

I want to say at the outset that I am not one of those fellows who runs around the world telling other people how to run their countries. I have never set out to change the world; I'll be happy if I can make things a little better for the people I represent back home in Massachusetts.

out on garage floors or tossed out in filters. The law would set a rising recycling requirement each year, perhaps reaching 50% at the end of 10 years.

The revenue generated could be used by the reprocessor/recycler to purchase used oil from gas station owners. The station owners, now realizing a profit from used oil, might be willing to pay for oil returned by individuals.

"Recycling is technically feasible and environmentally sound but does not get done because the wrong economic incentives are in place," Torres said.

The Consumer Products Recovery Act has almost universal support from congressmen, environmental groups and even the oil industry.

[From the Chicago Tribune, July 10, 1991]

SAFETY-KLEEN FACILITY REFINES OIL RECOVERY

(By Cheryl Jackson)

A new oil-recycling facility in northwest Indiana promises to produce more than recycled oil and renewed hope for the environment. It also may pump badly-needed life into the town of East Chicago.

Safety-Kleen Corp., the Elgin-based recycler of industrial wastes, hosted a grand opening for its newest oil recovery plant Tuesday.

The facility will double North America's capacity for oil recycling. When it reaches full capacity, it will process 75 million gallons of used automotive and industrial oils per year, converting it into 43 million gallons of high-quality base lubricating oil, as well as additional petroleum products.

Total storage capacity at the new facility is 7.7 million gallons—more than twice the capacity of the Shedd Aquarium's new Oceanarium.

The $50 million facility, which actually began operation in April, already has had an impact on East Chicago's fortunes. The heavily industrialized town just across the state line from Chicago's Southeast Side has been hit hard by plant closings in recent years.

East Chicago vendors already have grabbed a portion of the $19 million the company said it has spent in the vicinity during construction.

Safety-Kleen said the new facility has created approximately 50 full-time jobs, and that the payroll could reach 100.

American consumers dispose of 400 million gallons of used automotive oil each year, pouring it down drains or putting it into the trash. By recycling waste oils, the company reduces contamination of water supplies and at the same time produces useful—and profitable—products, said Donald Brinckman, Safety-Kleen chairman and chief executive officer.

The East Chicago facility will take in 75 million gallons of used automotive or industrial oils, 20 million gallons of oily waste waters and 43 million gallons of base lubricating oil a year. The plant will produce 11 million gallons of distillate fuel, 9 million gallons of asphaltic oils and 5 million gallons of reprocessed fuel.

Safety-Kleen Corp. is the world's largest recycler of contaminated fluid waste. In 1990, the company collected more than 198 million gallons of fluid for reclamation.

The company, which has grown to become the Chicago area's 27th largest in market capitalization, started in 1968 selling and servicing parts—washing machines used by manufacturers.

Although used oil is not yet listed as a hazardous waste, there is growing awareness of the environmental damage that can result from improper handling and disposal, said Jospeh Knott, Safety-Kleen president.

"The plant is designed as a hazardous-waste facility, even though waste oil is not a listed hazardous waste," Knott said, adding that recycling oil will eventually reduce America's dependence on foreign oil. "And you don't have the cost effectiveness 20 to 40 years from now of having to clean this mess up."

Safety-Kleen's attitude toward recycling and waste management was endorsed by William Muno, associate director of the U.S. Environmental Protection Agency office in charge of administering the Resource Conservation and Recovery Act, the federal law governing solid and hazardoue waste.

"The trend for the '90s is waste minimization. Don't produce the waste in the first place and if you produce it then recycle it," Muno said. "This factory is right in step with the program that EPA is trying to promote."

The new facility also will help Indiana reach its goal of decreasing the amount of waste in the state by 35 percent by 1995, and 50 percent by the year 2000, said Mitra Khazai, recycling coordinator at the Office of Energy Policy at the Indiana Department of Commerce.

"This may be the only acceptable way to handle used oil in the future," she said.

Safety-Kleen converts used oil from industrial and automotive customers into fuel oil for industrial use.

The company entered the oil-recovery business in 1987 when it acquired Breslube, of Breslau, Ontario, until recently the largest re-refiner in North America. The East Chicago facility is twioe the size of the Breslau plant.

Last year, Safety-Kleen collected more than 100 million gallons of used oil that was converted to high-quality, re-usable lubricating oil or industrial boiler fuel.

Supported by an extensive collection network, Safety-Kleen gathers used oil from thousands of sites around North America, and converts it into lubricating oil that is equal in quality to the original product.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CLARENCE THOMAS

Mr. GORTON—

I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless this constitutional principle is first established. * * *

I don't believe in quotas. America was founded on a philosophy of individual rights, not group rights. The civil rights movement was at its greatest when it proclaimed the highest principles on which this country was founded, principles such as the Declaration of Independence, which were betrayed in the case of blacks and other minorities.

These are the words of Judge Clarence Thomas who is black, the grandson of a sharecropper, educated in Catholic schools, and a conservative.

He is decidedly not politically correct. And that is why he is now at the heart of the furious attacks after his nomination for the Supreme Court.

What is politically correct? An administrator at the University of Pennsylvania redlined a student's phrase referring to her "regard for the individual" and added:

The word "individual" is a red flag phrase today which is considered by any to be racist.

The administrator went on to warn of the inequities that result from championing individual over group rights.

The politically correct believe that American society is sick. Their attitude is expressed clearly by Kirkpatrick Sale, the author of "The Conquest of Paradise: Christopher Columbus and The Columbian Legacy." He says that American civilization:

* * * is founded on a set of ideas that are fundamentally pernicious, and they have to do with rationalism and humanism and materialism and nationalism and science and progress. These are, to my mind, just pernicious concepts.

If these are pernicious, consider then their opposites: emotionalism, anti-intellectualism, incomprehensibility, sophistry, anti-humanism, anarchy, superstition and regression. These are—to my mind—pernicious concepts, and these are, indeed, the foundations, the walls, and the cornerstone of political correctitude.

William Phillips, for more than 50 years the editor of the Partisan Review, and hardly a rightwinger, summarizes this politically correct philosophy as:

* * * a vague but inauthentic radical outlook [that] still dominates the culture of the academy, the media, and the educated classes. * * *

[That culture includes] a belief in a widespread relativism in moral, political, and philosophical matters; * * * a general rejection of the existing social system; a radical revision of academic curricula; with an atmosphere of leftism and anti-Americanism permeating the whole.

The "politically correct" reject the concept of individual rights and believe that one's race, gender, ethnic background, sexual preference, and the like are more important than our common humanity or American citizenship. They ignore or are indifferent to the fact that lesser tribalism has destroyed half the emerging nations in Africa and is about to destroy Yugoslavia, has divided Canada, and is at the root of the ethnic hatreds and divisions that so plague Eastern Europe and the Soviet Union. And tribalism is the future that the politically correct promise the United States.

Because he does not share their terribly destructive views the "politically correct" seek to destroy Clarence Thomas. They fully understand that the next Supreme Court Justice will be a conservative—at least as conservative as Clarence Thomas—but they

react to the prospect of a black conservative with special fury. Because Clarence Thomas, by his very life and attitudes, destroys the thesis upon which their culture has built its castles: fortresses of division, mistrust, and hatred. But the fact that the grandchild of a black sharecropper, who has felt, and continues to decry, racism in our society, should nevertheless believe in the promises on which this Nation was founded in 1776—

That all men are created equal, and are endowed by their creator with certain unalienable rights—

Illustrates more clearly than a thousand essays the moral bankruptcy of the "politically correct".

For many reasons, not least his great courage and independence of mind, Clarence Thomas richly deserves to be confirmed by acclamation by the Senate of the United States. He represents ths redemption of the true promise of America, that all Americans are created free and equal and that any American can surmount the circumstances of birth, to arise, like Clarence Thomas himself, with a sense of history and pride, and with eyes open to the light ahead.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BINGAMAN). Without objection, it is so ordered.

The Senator from Minnesota is recognized.

Mr. WELLSTONE. I thank the Chair.

(The remarks of Mr. WELLSTONE pertaining to the introduction of S. 1527 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. I thank the Chair.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 1527 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

WHO IS CARLOS FUENTES?

Mr. STEVENS. Mr. President, at a recent Interior Appropriations Subcommittee meeting, I raised concerns about the Smithsonian Institution's use of its funding.

One of those concerns regards the upcoming Columbus quincentenary celebration. Despite its name, the event has little to do with Christopher Columbus, the explorer. Rather, it is supposed to be a celebration of the history and culture of Latin America.

In any event, during those hearings, I asked why the Smithsonian selected Carlos Fuentes as a national spokesman on a Smithsonian-sponsored television series.

Although Carlos Fuentes is a well-known Mexican author, he is described by some as "an independent leftist," a friend of Fidel Castro and Daniel Ortega, and a known critic of United States policy in Latin America.

I just thought it strange the Smithsonian, which is supposed to be the guardian of our Nation's heritage, felt it necessary to select a foreigner, well known for his anti-U.S. biases, instead of a U.S. citizen or at least some qualified spokesperson who has a more objective viewpoint to do this job.

As a result of that hearing, many people, including many Senators, have asked me, "Who is Carlos Fuentes?" In an attempt to answer that question, I ask unanimous consent to include, at the end of my remarks, an article that appeared in the New Republic. It is written by Mr. Enrique Krauze, and will, I hope, answer that question. I urge my colleagues to read the article.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE GUERRILLA DANDY

(By Enrique Krauze)*

He speaks all his words distinctly, half as loud again as the other. Anybody can see the is an actor.—HENRY FIELDING.

In the family album of exiled writers (Conrad, Nabokov, Zamyatin, Kundera), a close-up of Carlos Fuentes reveals something odd about his image. Is he a willing exile from Mexico in the United States, or a reluctant exile from the United States in Mexico? He has become something of a star in North America, where he lived until the age of 12, to the extent that even an American congressman observed that "Fuentes is a great man. He knows so much about his country." The congressman had not read a single book by Fuentes; his opinion, like the opinion of so many others, had been formed by the omnipresence of the writer in the media.

In Mexico, Fuentes has an altogether different image. No one doubts his exemplary passion for literature and his professional attachment to it. He has published novels, stories, essays, drama, and countless articles. And yet for some time now his writings have been arousing irritation and bewilderment. Mexico is a country whose complexity has exhausted several generations of intellectuals, but Fuentes seems unaware of that complexity. His work simplies the country; his view is frivolous, unrealistic, and, all too often, false.

In a poem by Octavio Paz, a story by Juan Rulfo, or a painting by Rufino Tamayo, Mexican life is the point of departure for the work, and the work participates in that life. Even certain foreign artists have captured what is new, and radically alien, about Mexico: the Mexican pink in Rauschenberg's canvases; the signs hanging on the cantina walls in Lowry's famous novel; the dark women in *Viva Zapata* walking over rough paving stones; the lighthearted, innocent cruelty in Buñuel's *Los Olvidados;* the market day in Lawrence's *Mornings in Mexico.* A reality embodied by Mexicans for foreigners to discover. But Fuentes, a foreigner in his own country, skirts that reality, and lingers over externals. For Fuentes, Mexico is a script committed to memory, not an enigma or a problem, not anything really living, not a personal experience.

There is the suspicion in Mexico that Fuentes merely uses Mexico as a theme, distorting it for a North American public, claiming credentials that he does not have. The appearance of *Myself with Others,* then, is timely. Its autobiographical pages finally reveal the origins of his intellectual sleight of hand. The book shows Fuentes's lack of identify and personal history. From the very start, it's clear that he filled in this void with films and literature. His real world was his fictional world: a cinematic sequence of authors and works. Lacking a personal point of view and an internal compass, Fuentes lost his way through the history of literature and found himself condemned to the histrionic reproduction of its texts, theories, and personages. The key to Fuentes is not in Mexico; it is in Hollywood. The United States produces actors for movies, for television, for radio, for politics. Now and then it produces actors for literature, too. Carlos Fuentes is one of them.

I.

"This is not a border, it is a scar." This statement by one of the characters in *The Old Gringo* is excessive as a description of the vicinity between Mexico and the United States, but an accurate epigraph for Fuentes himself. He was a gringo child of Mexican origin, born in Panama, a place where history and geography have indeed left a scar. On the outskirts of the Depression and the New Deal, his placid childhood was spent in the "territorial fiction" of diplomatic life, in a seven-room apartment that was "superbly furnished" and had a view of Meridian Hill Park in Washington, D.C. *Myself with Others* recalls long summers when "the livin' seemed easy," a good old time when Fuentes learned to prefer "grits to guacamole" and work to idleness ("no siestas for me"), and first dreamed the American dream: that everyone will be famous for 15 minutes.

On his vacations, he visited Mexico. "It was depressing to compare the progress of a country where everything worked, everything was new, everything was clean, with the inefficiency, backwardness, and dirt of my own country." In contrast to the North American past, Mexican history seemed little more than a series of "crushing defeats," beginning with the TTT: the "Tremendous Texan Trauma." Fuentes grew accustomed to seeing Mexico not on its own terms, but refracted through a North American perspective. No Mexican loses sleep over the TTT, and none would say, as Fuentes does, that "the world of North America blinds us with its energy: we cannot see ourselves. We must see you." Quite the opposite: Mexico has always been a country maniacally obsessed with itself. But Fuentes is a special kind of Mexican. He discovered the existence of his conntry at the age of ten, in 1938, when President Cardenas decreed the expropriation of foreign oil properties. He suddenly realized that this "nonexistent country" was his identity, an identity that was slipping away from him.

"How I Started to Write" (an autobiographical chapter in Myself with Others) is a good example of the onomastic prose, worthy of a marquee, that is so peculiar to Fuentes. It introduces the veneration of the

*Enrique Krauze is deputy editor of *Vuelta* in Mexico City. His most recent books are *Por una democracia sin adjetivos* and biographies of 20th-century Mexican political figures in the eight-volume *Biografía del poder.*

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Mr. BROWN. Mr. President, H.R. 2686 also imposes a moratorium on the processing and issuance of patents for mining or mill site claims. The Senate Energy and Natural Resource Committee is holding hearings on this matter, and it is inappropriate to interfere with the consideration of this issue in the context of an appropriations bill. More importantly, because patents are often required in order to obtain financing for production facilities, a moratorium will interfere with the development of bona fide projects and deprive rural areas of jobs which are essential to local and state economies throughout the West.

Mr. BAUCUS. Mr. President, the House of Representatives recently voted to drastically increase the fee for grazing livestock on Federal lands. I believe this action is contrary to balanced multiple use. It would devastate the livestock industry throughout the West.

Right up front, I'll tell you that many Montana ranchers and Main Street businesses won't be around much longer if Congress approves a drastio increase in the Federal grazing fee.

The cattle business is an important part of Montana's past, present, and future. Grazing is and must remain an important multiple use.

Several years ago, author Larry McMurtry wrote a book called "Lonesome Dove." This overnight classic was the fictional account of the very first great cattle drive from Texas to what McMurtry describes as a "cattleman's paradise in a wilderness called Montana."

In 1989, Montanans chose to celebrate 100 years of statehood by reliving a part of the experience described in Lonesome Dove. Thousands of cattle, hundreds of men, women, and horses took part in the "Great Drive of '89."

I spent 5 days on the dusty trail from Roundup to Billings. It was the experience of a lifetime.

Yet, as important as the cattle industry is to our Montana eoonomy and way of life, there are those who think the cattle have no place on the public range.

"We've heard the rhetorio of those who would eliminate grazing as a multiple use—"No Moo in '92"; and "Cattle Free in '93."

It's all designed to scare the Devil out of the decent, and hard working folks who make a living in this Nation's livestock industry.

While I do not attribute such rhetoric to those Members of Congress who advocate an increase in grazing fees, I must point out that the people of Montana and other Western States feel just as threatened by these proposals.

The draoonian increase proposed by the House would effectively mean an end to grazing as a multiple use on Federal lands. No rancher in his right mind would pay such an increased fee and also put up with the red tape and regulation that frequently accompanies a permit to graze on the Federal domain.

I talk to lots of Montana ranchers. Not all of them believe the current system is such a great deal. In fact, in some instances, complying with Federal regulations has made some allotments more trouble than they are worth.

Under the current fee formula, grazing on public lands remains the life blood of many of our rural communities, particularly in eastern Montana.

A study conducted by Montana State University estimates grazing on Federal lands in Montana generates $125.5 million in total economic activity each year.

In a State with just over 800,000 people that's an important part of our livelihood.

We are a public lands State—Uncle Sam holds the deed to 30 percent of the lands in Montana. Montanans don't want to see the land exploited. We don't want to see the land used up.

Balanced multiple use, including grazing, is essential to our way of life, our economy, and our environment.

Ask any reputable range scientist. He or she will tell you that managed grazing actually improves the condition of the range.

Stockwater improvements benefit wildlife.

Where bison once roamed, cattle now replenish the range and prevent the prairie from going to seed.

I'm not saying there have not been abuses. But the answer to these abuses is allowing professional land managers to do their jobs. The answer is not to drive the rancher off the public range.

Therefore, I hope the Senate will remain steadfast in opposition to an increase in the existing grazing fee. The ourrent formula reflects the increase in cattle prices and is a fair way to adjust the fees.

Our decision will affect more than just cattle. Our decision will touch thousands of people in Montana and throughout the West.

NOMINATION OF JUDGE CLARENCE THOMAS TO THE U.S. SUPREME COURT

Mr. THURMOND. Mr. President, on September 10, the Senate Judiciary Committee will begin hearings on the nomination of Judge Clarence Thomas for a position as an Associate Justice of the Supreme Court. I was pleased to work with Senator BIDEN to expeditiously schedule these hearings and am confident that they will be concluded in time for committee and full Senate action so that Judge Thomas can begin serving on the Court when it reconvenes in October.

Since the nomination of Judge Thomas, there has been much discussion regarding his tenure as Chairman of the Equal Employment Opportunity Commission. Just 17 months ago, Judge Thomas was before the Judiciary Committee upon his nomination to the Court of Appeals. At that time, a thorough evaluation of his role as Chairman of the EEOC was undertaken. Many of the issues now being raised in the press and elsewhere were fully reviewed and discussed in detail at that time. It was brought to the attention of the Judiciary Committee that Judge Thomas was responsible for implementing policies designed to reform and improve the EEOC, invigorating its mission to assure the fair treatment of all persons in the workplace, and insuring the vigorous enforcement of our equal employment laws.

As well, Mr. Evan Kemp, successor to Judge Thomas as chairman of the EEOC, has commented publicly about the tenure of Judge Thomas. Mr. Kemp acknowledges that much of the credit for turning the EEOC around is due to the efforts of Judge Thomas. The EEOC that Judge Thomas inherited was historically underfunded, reportedly had management problems, and dispirited employees. Judge Thomas brought a professionalism and dedication to that agency making it a successful, effective one.

Mr. President, many of the discussions about the tenure of Judge Thomas at the EEOC involve the apparent lapse of claims under the Age Discrimination in Employment Act. Numerous estimates as to the number of lapsed cases have been mentioned, some of them clearly erroneous and inflated.

During his prior testimony before the Judiciary Committee, Judge Thomas stated that upon discovery of the concerns about lapsed cases, he immediately took steps to rectify the situation. He was instrumental in supporting passage of legislation to extend the time for affected persons to file civil lawsuits. Of those persons covered by the legislation, only a small number chose to litigate their claim.

Additionally during the tenure of Judge Thomas, he adopted a policy, unlike any which had existed prior to his appointment, to fully investigate every Federal age discrimination claim. While at the EEOC he assured that persons filing Federal claims under the Age Discrimination in Employment Act, either with the EEOC or State run fair employment agencies, were notified of the statute of limitations and of their independent right to sue in Federal Court. Judge Thomas modernized the national data systems to better track these cases and ensure that they were properly handled. He undertook strong efforts to see that those filing claims had their rights protected.

In closing, Mr. President, Judge Thomas performed admirably as Chair-

man of the EEOC. After an exhaustive examination of his tenure at the EEOC, specifically an examination of the issue of the lapsed cases, the Judiciary Committee voted 13 to 1 to favorably report his nomination for the Court of Appeals to the full Senate, and the Senate quickly confirmed him.

Mr. President, I look forward to the committee's consideration of Judge Thomas and swift action by the full Senate on this nomination.

Mr. DURENBERGER. Mr. President, I ask unanimous consent that Susan Barlett Foote and Robert Wood Johnson fellow on my staff, be given privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

HEALTH CARE LIABILITY REFORM

Mr. DURENBERGER. Mr. President, one of the most talked about areas of health reform is medical liability. And the tendency is to view it in isolation, like a surgeon working on a specific organ of a patient. This morning, I want to speak about the impact of medical liability on the broader health-care system, and how to reform it in a way that makes the whole patient healthier. With others, I intend to introduce legislation to accomplish the objectives set out in this statement.

Health care liability does significantly affect all key elements—the costs of health care, access to health care, and the quality of health care. Along with several of my colleagues, I have been struggling to understand this problem. Today, I want to share where I have come to in this debate.

As you know, I have long been concerned about how to provide universal access to health care. Universal access is, of course, our primary goal. One of the major barriers to access is the escalating costs of providing medical treatment.

And, as we struggle to contain rising oosts, we also want to make sure that we don't sacrifice the quality of care. We must always remember to ask: Universal access to what? The "what" is the elusive but pivotal notion of quality care.

What do we mean by quality? In its broadest sense, quality means the achievement of the best possible or most appropriate outcome, measured by both science and by patient satisfaction.

How does health care liability relate to our desire for universal access to cost-effective, high quality care?

I submit, Mr. President, that our system of medical liability is the worst of all possible worlds. Medical liability raises costs, impedes access, reduces quality of care, and systematically interferes with the most forward-looking efforts to improve the quality of care.

Mr. President, let us begin with its impact on the costs of health care. The direct costs of liability premiums for physicians alone were close to $6 billion in 1988. Although we have weathered the escalating premiums in the decade from 1976 to 1986, when there was a true insurance crisis, the out-of-pocket costs to providers of services and producers of medical technology remain high.

There is another hidden price tag. The costs of defensive medicine—all those unnecessary tests and procedures for protection in court not for patient benefit—are harder to measure. The AMA has estimated defensive medicine at $19 billion.

These costs also negatively affeot access to care. Over 150 communities in 26 States have reported that many doctors are leaving practice, particularly in the field of obstetrics and gynecology, because they cannot afford to pay their malpractice premiums. This is especially a problem in rural areas in our Nation.

Mr. President, we could tolerate an upward pressure on costs, and even some of the barriers to access caused by doctors leaving practice, if the result was improved quality.

Ironically, the present liability system actually promises higher quality health care. Apologists claim that the threat of lawsuits deter substandard medical practices. On the margin, some individuals may indeed practice more cautiously out of fear of litigation. But, after a careful look at this system, it is clear to me that the courts won't improve the quality of health care. I say simply, we cannot get there from here.

This is not the fault of doctors. This is not the fault of lawyers. It is not the fault of insurance companies. In the case of health-care services, the liability system will always fail us. It simply cannot deliver what it promises.

Why?

Unfortunately, Mr. President, the medical liability system not only lowers the quality of care by almost any measure, but it actually interferes with efforts to improve care.

How does the system lower quality? Defensive medicine, by definition, reduces the quality of care. Any test or treatment which is not medically indicated, performed purely to protect the paper trail in the patient's record, does not improve outcomes and may harm the patient in the process. This is not quality care.

But, there is another serious limitation in tort law. The system itself obstructs quality improvement. What do I mean by quality improvement? Mr. President, I would like to have printed in the RECORD a concise article on health care quality by Dr. Donald Berwick that appeared in the New England Journal of Medicine. This piece applies W. Edwards Deming's concept of continuous quality improvement or CQI to the health-care services setting.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DURENBERGER. Mr. President, continuous quality improvement occurs when "every process produces information on the basis of which the process can be improved." The Japanese call it "Kaizen"—the continuous search for opportunities for all processes to get better.

How does the liability system interfere with continuous quality improvement?

First, the tort system was designed to resolve disputes between individuals—one-on-one—plaintiff versus defendant. It might make sense if aggrieved patients sue individual physicians who practice alone in an office.

However, health care is now practiced in a tremendously complex system, replete with countless interrelated services. Health care begins at the first contact with a receptionist, and includes the services of the lab, the technicians, the ancillary and support personnel, the hospital, the medical records office, the out-patient clinic, technological equipment, pharmaceuticals, and on and on.

We desperately need ways to compensate people who are not well-served by the total process. It is counterproductive to hunt for the deepest pocket or the most proximate individual.

Second, the liability process is confrontational, adversarial, and punitive. Even the term malpractice implies ill will and is wholly negative. The liability system is the epitome of a theory of bad apples, which implies that people must be forced to care about the quality of their word and should be punished for their mistakes. This notion is contrary to Deming's concept of quality improvement which presumes that people want to improve performance and will respond to positive incentives to do so. There are no positive incentives in tort law.

Quality improvement requires trust among all the actors in the system. Talk to anyone who has been a party to a lawsuit. Litigation erodes the trust and goodwill between patient and the provider that are core values necessary for high quality care. Even the threat of litigation engenders suspicion and distrust.

And, we know that quality improvement treats every defect as a treasure knowledge of defects offers the ability to improve. In the shifting sands of medical liability, every defect is a landmine. Information is a threat when lawsuits loom, and can be bottled up in the hands of insurance companies and lawyers. Quality improvement depends upon the very flow of information that litigation suppresses.

Finally, and most importantly, how can a system reward quality, or com-

loan guarantees should not be held over Israel's head. That is not the way one friend treats another.

So, I offer my praise to Israel. For opening its doors willingly to a new population and for the sacrifices it will make to ensure their success.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent I be permitted to speak for another 10 minutes as if in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CLARENCE THOMAS AND THE NEW ORTHODOXY

Mr. HATCH. Mr. President, I draw my colleagues' attention to a perceptive article by Judge Clarence Thomas, based on an August 17, 1983, speech. In the speech, he has anticipated and replied to many of his current critics who seek to punish him for not being a slavish supporter of the liberal orthodoxy on minority issues.

Judge Thomas noted that—

> There is an established "right" position for minorities to take on [certain issues]. For example, the "right" solution to the problem of ending job discrimination is to support affirmative action. The "right" way to achieve educational equality is through busing; and the "right" way to help the poor minority is through a fiscally liberal welfare system. Those whose positions differ from these established positions and even those who question these positions are, according to this new orthodoxy, just plain wrong. They are suspect. They are Judas goats, pariahs, quislings. They may even be labeled "anti-civil rights." The basis for their opinions and positions are not investigated, because, according to the new orthodoxy, the right position is axiomatic. * * * The right positions are gospel, not subject to analysis or debate.

The Judge continued:

> I want here to urge black professionals that you not permit yourselves to be insulted by an orthodoxy that requires you to ignore the education for which you have worked so hard and diligently. I want here to urge that you insist on your intellectual freedom—that you not permit the rigidity of this orthodoxy to straitjacket your thinking. I ask that you use your skills and intellect when you consider the many issues affecting minorities in this society, that you study and analyze the facts about traditional approaches, and that you calmly and rationally examine the results of policies which affect minorities. None of us want to be perceived as cutting back on civil rights. But as the few survivors of the educational process, we must simply look at the results of policies upon which minorities have relied to improve their socioeconomic condition.
>
> Recent reports have shown what many of us have argued for years: that family composition, education and a host of other social factors can have as much impact on employment opportunities as traditional barriers caused by discrimination.

There is the crux of it, Mr. President. Judge Thomas dared to think for himself and to question liberal shibboleths. This, apparently, is viewed as a tremendous threat by many black and white liberals and by some in the traditional civil rights leadership.

Judge Thomas, in this 1983 speech, acknowledged more had to be done to counter the legacy of discrimination than merely stopping the discrimination. But, he dared to question "the effectiveness and legality of certain affirmative action programs and policies" and noted that the 1980 census showed a widening income gap between affluent and poor blacks. At the same time, Judge Thomas made clear the EEOC would uphold the law and use the tools the courts made available to it, whether he liked them or not. He also argued for tougher penalties for violating title VII than exist in current law, well before the current drive to do so in Congress. He praised the accomplishments of the civil rights movement. But, he dared to question aspects of affirmative action. he dared to mention that there are factors other than discrimination that serve as barriers to minority success. He mentioned the need to develop training and education programs, for example, to attack the socioeconomic problems facing minorities.

For espousing this reasonable point of view, Judge Thomas has been vilified by some who cling to the big government approach and who reflexively rely upon policies of reverse discrimination, however euphemistically described, to address the problems of minorities today. One can debate the positions he has taken and disagree with them on the merits. Some of his critics, however, do not want to debate these issues, they wish to smear and slander those who disagree with them. Carl Rowan, whom I admire for his usually incisive commentary even when I disagree with it, called him a "David Duke" on two different episodes of a talk show. This was an uncharacteristic low blow. Others have made similar unfair attacks and are trying to tear the man down in order to discredit his different ideas. They do so because they are afraid to confront and debate those ideas fairly.

As I said, Mr. President, Judge Thomas has long since answered these critics. At the end of his speech in 1983, Judge Thomas said to what I understand was a predominantly black audience:

> You have been privileged to receive an education. You have the ability to understand that because our problems now transcend race, solutions must also extend beyond race. You must not be afraid of being disliked and must resist functioning in lockstep with others simply because doing so is more convenient. We cannot accept the implications of the new orthodoxy which exists in America today—an orthodoxy which says that we must be intellectual clones. We fought too long and too hard to make people stop saying blacks looked alike—but I say it is a far greater evil that many say blacks think alike—it is a far greater evil that we tend to exalt rhetoric over facts and critical analysis.

Mr. President, those are the words of an independent thinker, the kind of person one would want to have on the High Court. It is no surprise that, in this speech, Judge Thomas quoted these lines from a poem:

> Two roads diverged in the woods and I—
> I took the one less traveled by,
> And that has made all the difference.

I ask unanimous consent that a copy of Judge Thomas' speech be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DISCRIMINATION AND ITS EFFECTS

(By Clarence Thomas)[1]

This article will discuss discrimination and its effects. My grandparents, who raised me, are perfect examples of what discrimination can do. In my early childhood, my grandfather would rise between two and four a.m., deliver ice, then spend the rest of the day delivering fuel oil. During the summers, we worked on a farm—literally from sun up to sun down, six days a week—taking only the Lord's day off. This all goes to say that my grandfather and my grandmother worked harder than anyone I know.

Early in life, as I watched them toil away, I realized that their efforts would be seriously impeded by something beyond their control—racial discrimination. They had overcome the lack of formal education, the Great Depression and an assortment of other adversities. But, no matter what efforts they made race was a roadblock to taking full advantage of the benefits of this country. As a result of living through this experience and other experiences, I have strong views about civil rights.

As you all know, we face serious challenges in the area of civil rights enforcement—an urgent need to reaffirm a national obligation, to recommit federal leadership in guaranteeing basic legal rights to face up to hard questions, perhaps to accept tough answers. Of particular interest to me, of course, are those challenges I grapple with daily in the area of equal employment opportunity law. Unquestionably, employment discrimination continues to limit opportunity in our society, with a pervasive, devastating impact on minority and female expectations. The fact of this continuing impact is made clear to me on a regular basis in the course of my work at the equal employment opportunity commission.

I have seen a continuing flow of discrimination charges filed with the EEOC over the little more than a year that I have been on board. An alarming number of these charges have merit. By the end of last fiscal year, the commission authorized some one hundred and twelve new cases for litigation. The money awards we won for plaintiffs exceeded $33 million. We have made a determination on these charges. The courts have affirmed. Employment discrimination continues. And we are continuing a vigorous fight to eradicate it. But that is precisely the way it should be. Unquestionably the federal government has the primary responsibility to protect the civil and constitutional rights of

[1] The above article is an edited version of a speech given before the "New Coalition," Chicago, Illinois, August 17, 1983. Mr. Thomas is the director of the Equal Employment Opportunity Commission.

all citizens. This responsibility must not be abdicated and cannot be delegated. Civil rights are fundamental to our way of life and their protection is absolutely essential. It always has been. Historically, the federal government has recognized its legitimate moral interest, its binding obligation to protect the civil rights of our citizens. We learned some time ago that such matters of grave, national importance cannot be entrusted to local governments and to private citizens. At a painfully slow pace, this ideal has increasingly gained the force of law over the years—progress due to specific efforts by all three branches of the federal government.

As a result, today equal employment opportunity is the law—written into Title VII of the Civil Rights Act of 1964; strengthened by amendments; supported by executive orders; given clearer definition by court decisions. The federal law is stronger than ever before in its ability to offer protection. We must make sure the federal government continues to show its willingness to offer protection. I am committed to making sure that the law is enforced—effectively, efficiently, equitably. It is my personal commitment as much as it is my sworn duty.

But this federal responsibility should go even further than merely enforcing the law. The government has a profound obligation to exert its leadership in moving us forward—fostering a national consensus of renewed support for compelling matters of national policy. Every agency in this government with a direct interest in EEO enforcement must demonstrate to private sector interests that we fully intend to enforce the law. There can be no equivocation on basic questions of right. No excuses for failure to correct the present effects of past injustice. It must be made clear. We are in this fight to win. And I might add we take no prisoners.

Challenges, however, are not as simple as the black and white picture many have tried to paint. In large measure, they are rooted in the on-going changes in our environment. We live in a dramatically different political, social, economic world today than the one that existed a generation ago, when we took bold forward stsps, enacting most of the important civil rights laws we debate today.

The problem of discrimination also has changed. Yesterday, we confronted clear-cut acts of blatant discrimination. Today, we are confronting less obvious, but no less pervasive effects caused by discrimination.

The solutions are not always as clear-cut or easy. Sometimes, as a result, we tenaciously hold onto those partial solutions we do find, hoping they might solve all our problems. But short-term resolution may not be in our long-term interest: to transform a national ideal into an enduring reality.

There has been increasing conflict—a deep philosophical tension concerning the best way to approach emerging problems: a fundamental belief in limited government interference with basic individual rights; but an equally strong belief in government intervention to protect these very same basic rights. This tension has led to considerable disagreement—disagreement which cuts across all social and economic lines; disagreement which appears to be eroding a once-powerful national consensus on civil rights policy in general.

We simply cannot allow this to continue. The federal government has a responsibility to take the lead in making sure that it does not continue. First, we cannot allow important matters of national policy to be reduced to simple matters of political posturing. The issues we face are clearly too complex to be tossed around as oversimplified campaign slogans which inflame more than inform. Responsible government leaders simply should not participate in such an exercise. Our personal views on the laws we enforce are, at most, inconsequential, we have sworn to uphold the laws.

Furthermore, the executive branch in particular can exert leadership in this area by making sure its own house is in order. We cannot expect to be effective in enforcing the EEO laws in the private sector if we do not do all we can to comply with those laws ourselves. Effective performance of this duty also requires that we look for new ways to strengthen our enforcement of the laws. We have been doing that at the commission.

We are currently looking at new ways to devise a streamlined system to process charges in a speedy fashion, to eliminate duplicative reviews, provide effective relief for charging parties and guarantee the due process rights of all concerned. And we will leave a better EEOC than we inherited. But we must also consider ways in which we can strenghten the law itself.

I have said on numerous occasions that I believe the equitable remedies available under Title VII are not as compelling as the civil damages available under other federal statutes. While we can provide backpay and reinstatement to employees who have been wrongfully denied equal job opportunities, we cannot penalize those who discriminate. It is high time we consider strengthening the sanctions we can impose in order to increase our ability to fully protect the right to equal opportunity. I think it is a disgrace that the penalty for tampering with a mailbox is greater than the penalty for discriminating. Just telling a discriminator to do right—to hire a few minorities—to promote a few women—is not enough. Even stronger laws, however, will lose their effectiveness if we do not exercise wisdom in applying those laws to appropriate situations. We must have the courage to admit that, while discrimination does continue to have a devastating effect on certain group expectations, there are other socioeconomic factors which also have historically contributed to the limited opportunities of a great many people.

"Two roads diverged in the woods and
I—I took the one less traveled by,
And that has made all the difference."

Hence, I decided to discipline my intellect and use my passions to push me to grapple the seemingly intractable problems facing minorities in this country.

It became clear, at least to me, that I did not need to go to college to become angry. I did not need to go to college to protest. I could have stayed home and done that. Nor was it necessary for you all to have undergone the stress and sacrifices attendant to acquiring an education in order to be governed by your passions. You were educated to sharpen your intellect—to enhance your analytical skills. You now become part of a very select group. With this privilege comes a corresponding responsibility, or perhaps more aptly put, a corresponding duty. As leaders, you must form your opinion on certain issues affecting the lives of minorities in this country. You must decide whether you will adhere to an approach to these issues with your hearts or your intellect. The importance of this decision cannot be too greatly stressed, because as intelligent and resourceful people, it will be up to Black professionals to develop and implement solutions to our problems.

Let me explain more fully what I mean. Over the past few years certain issues have been established as issues of primary concern to minority groups. These issues relate to the effort to achieve equality in employment, education and other socioeconomic aspects of the lives of minorities. In general, the debate on "minority issues" centers around affirmative action, busing and welfare. Occasionally, the discussions include job training programs, public housing and government set asides. Along with the established issues of concerns to minority group members, there is an established "right" position for minorities to take on these issues. For example, the "right" solution to the problem of ending job discrimination is to support affirmative action. The "right" way to achieve educational equality is through busing; and the "right" way to help the poor minority is through a fiscally liberal welfare system. Those whose positions differ from these established positions and even those who question these positions are, according to this new orthodoxy, just plain wrong. They are suspect. They are Judas, goats, pariahs, quislings. They may even be labeled "anti-civil rights." The basis of their opinions and positions are not investigated, because according to the new orthodoxy, the right position is axiomatic. The right position is axiomatic, a priori. The right positions are gospel, not subject to analysis or debate.

I have established certain positions on issues involving minorities. However, I do not here want to advocate my views or my opinions. No! I want here to urge Black professionals that you not permit yourselves to be insulted by an orthodoxy that requires you to ignore the education for which you have worked so hard and diligently. I want here to urge that you insist on your intellectual freedom—that you not permit the rigidity of tbis orthodoxy to straight-jacket your thinking. I ask that you use your skills and intellect when you consider the many issues affecting minorities in this society, that you study and analyze the facts about traditional approaches, and that you calmly and rationally examine the results of policies which affect minorities. None of us want to be perceived as cutting back on civil rights. But as the few survivors of the educational process, we simply must look at the results of policies upon which minorities have relied to improve their socioeconomic condition.

Recent reports have shown what many of us have argued for years: that family composition, education and a host of other social factors can have as much impact on employment opportunities as traditional barriers caused by discrimination.

These factors raise questions about the effectiveness of some of the particular methods we are using to overcome tough problems. For example, we have seen a continuing national debate over the merits of affirmative action without a real determination of its successes. In more than a decade of affirmative action policy, we have seen conflicting reports. But we cannot ignore the fact that Black men—who were supposed to be helped by affirmative action—are still dropping out of the labor market at a frightening rate. One recent study showed that Black male participation in the civilian labor force dropped from 74.1 percent in 1960 to 55.3 percent in 1982. This is an alarming drop of 18.8 percent. And while the income of the most fortunate of us has reached parity with whites—the income of the least fortunate continues its relentless and precipitous downward trend. Something is very wrong.

In light of real world facts of life, there should be no reasoned disagreement over the

underlying premise of affirmative action: that is, that we simply must do more than just stop discriminating if we are ever going to stop the effects of a history of discrimination. But, we must have the courage to recognize that there is room to question the effectiveness and legality of certain affirmative action programs and policies. It would be irresponsible for us simply to turn our backs on this reality and assume we have developed a social and legal panacea. This is particularly true when the 1980 census shows a widening income gap between affluent and poor Blacks.

Even while we may question the effectiveness of current methods, we are still bound to uphold the law. We at the commission, through our compliance and litigation program, are involved in the area of affirmative action. The courts have determined this to be an appropriate remedy for us to pursue and a significant portion of the cases we handle continue to result in settlements or court orders which provide affirmative relief. And, as long as I am chairman we will aggressively pursue all remedies available to us—whether I like them or not. But we must continue to raise questions about the effectiveness of particular tactics of our overall strategy. After all, the great civil rights victories we have seen so far were not won as a result of a blind allegiance to the status quo. We have moved forward because we dared to question established policy; because we were relentless in searching for answers.

Our future challenge will be to continue using the law to remedy problems arising from violation of the law; working all the while—probing and testing—to develop the much-needed solutions—including the training and education programs we desperately need—to attack problems rooted in socioeconomic causes. Unquestionably, the federal government must and will continue to have a major role to play; continuing to protect rights through strict enforcement of the laws; continuing to exert leadership to ensure that the generation that carries us into the next century will not continue fighting the same battles over and over again.

Fifteen years ago—about this time of the year, I was boarding a train to go off to college. Those were interesting years, a time for activism, a time for protest. I remember the protests and rallies to free Huey Newton and Angela Davis. I remember the pickets, the demonstrations, the anti-war marches. I also remember the free breakfast programs, and tutoring community children. As I look back, I become keenly aware of the groping, the struggling for answers to the many problems of minorities in this country. Passion and emotions overtook reason and consumed us. We were angry, very angry.

Before graduating from college, and as a veteran of countless protest efforts, I realized that we were allowing our hearts rather than our minds to lead us to the solutions which were so badly needed. I recalled the words of Robert Frost, which had helped me during my high school days as I fought to harness the anxieties of Richard Wright's Bigger Thomas; reconcile Christianity and segregation, and educate myself in a seminary which was all-white—except for me.

I do not mean to suggest that the civil rights movement and the accomplishment of that movement are meaningless. The laws that the leaders of the civil rights movement encouraged remain crucial to the achievement of equality for minority people in this country. Nor do I want to paint a picture of hopelessness or desperation for minority groups in America. I have every faith in our ability to address the problems of the minority community. However, I believe that in order to address these problems, you will have to seek new directions. The information I have access to supports this belief. This information suggests that our strategy and our approaches must be questioned and changed if we are to realize the goal of equality for all members of the society in which we live. In developing this new approach, we must resist rhetoric and noble intentions. Instead, we must demand positive results.

Many of us have walked through doors opened by the civil rights leaders, now you must see that others do the same. As individuals who have received the benefit of an education which was probably denied your fathers and mothers, and in some cases sisters and brothers, you must devise a plan for a civil rights movement for the 1980s. The effort which it takes to do this cannot be legislated or mandated. It must come from within you. I believe that we can have impact. That we can solve the seemingly intractable problems of minorities in this country. I assure you that if we don't try, if we are not positive, if we continue to make excuses and if we continue to let naysayers dominate our thinking, the problems will not be solved. If you and I don't solve these problems, then who will? If we don't do it now, then when? We simply cannot afford another decade of misdirection.

You have been privileged to receive an education. You have the ability to understand that because our problems now transcend race, solutions must also extend beyond race. You must not be afraid of being disliked and must resist functioning in lockstep with others simply because doing so is more convenient. We cannot accept the implications of the new orthodoxy which exists in America today—an orthodoxy which says that we must be intellectual clones. We fought too long and too hard to make people stop saying Blacks look alike—but I say it is a far greater evil that many say Blacks think alike—it is a far greater evil that we tend to exalt rhetoric over facts and critical analysis.

To change our thinking is not easy. I know it is difficult to change when the changes are perceived and publicized as setbacks to civil rights gains. But we cannot clutch symbols when reality demands action. I urge that you not instinctively dismiss new concepts, new ideas, new proposals and new leaders. I ask that you engage in rational discussion about the problems of minorities and demand that others do so. I ask that you not permit those who thrive on sensationalism, to sway you. I ask that you be persuaded by the same study and research as you would be persuaded by in your professional endeavors. I ask that you join me in seeking new, meaningful directios for the members of minority groups in America. The problems that I speak of are critical to our survival. This makes reexamination and redirection all the more compelling. I ask that you use the many skills you have acquired to dissect systematically the problems facing minorities. Only in this way will be begin to find solutions. The future depends on your skills—your courage—your strength!

DO NOT SACRIFICE CLARENCE THOMAS ON THE ALTAR OF REVERSE DISCRIMINATION

Mr. HATCH. Mr. President, we have all become aware since Judge Thomas' nomination to be Associate Justice of the Supreme Court that his written views on civil rights and affirmative action are the subject of intense scrutiny.

While some of his critics describe their concern as based on his overall views or record, when one boils down this opposition, it really amounts to this: The judge has expressed opposition to preferences for or against anyone on the basis of race or gender and those who support such preferences want to punish him for it.

I trust, Mr. President, that the Senate will not sacrifice Judge Thomas on the altar of reverse discrimination, as some of his critics would have us do.

Judge Thomas has fought discrimination all of his life. He knows what it is like to be a victim of racial discrimination—both of the subtle and open varieties. There is not a single Member of this body who can tell Clarence Thomas what it is like to be subjected to vile racism.

Judge Thomas has an excellent record in the executive branch. He took the chairmanship of the Equal Employment Opportunity Commission in 1982 when that agency had been left in shambles by the Carter administration predecessor. He turned that agency around. I know. I chaired the Labor Committee, with oversight over the EEOC, for the bulk of Judge Thomas' chairmanship, and was ranking member for the remainder of it.

He did a fine job. The number of lawsuits and interventions filed increased from 195 in fiscal year 1983 to a record 599 in fiscal year 1989. A May 17, 1987, editorial of the Washington Post entitled "The EEOC Is Thriving" praised "the quiet but persistent leadership of Chairman Clarence Thomas * * *."

Judge Thomas has expressed the view that our Constitution and civil rights laws apply equally to all Americans—black and white. Is that wrong? He has expressed his disfavor of reverse discrimination, regardless of the euphemism used to mask racial and gender preferences. He has identified with the eloquent dissent of Justice Harlan the elder in the Plessy versus Ferguson case, which enshrined the odious racial doctrine of separate but equal—a doctrine Judge Thomas lived under for part of his life. In his dissent, Justice Harlan correctly said:

> Our Constitution is colorblind, and neither knows nor tolerates classes among citizens.

Indeed, Justice William O. Douglas expressed similar sentiments in his dissent in the DeFunis versus Odegaard case. That was a 1974 case in which the court declared moot a controversy concerning a State law school's racially discriminatory admissions policy. This is what Justice Douglas had to say:

> The consideration of race as a measure of an applicant's qualification normally introduces a capricious and irrelevant factor working an invidious discrimination. Once race is a starting point, educators and courts

are immediately embroiled in competing claims of different racial and ethnic groups that would make difficult, manageable standards consistent with the Equal Protection Clause. The clear and central purpose of the 14th amendment was to eliminate all official State sources of invidious racial discrimination in the States.

There is no constitutional right for any race to be preferred. * * * A DeFunis who is white is entitled to no advantage by reason of that fact; nor is he subject to any disability, no matter what his race or color. * * *

The Equal Protection Clause commands the elimination of racial barriers, not their creation in order to satisfy our theory as to how society ought to be organized. * * *

If discrimination based on race is constitutionally permissible when those who hold the reins can come up with "compelling" reasons to justify it, then constitutional guarantees acquire an accordion-like quality. * * * [416 U.S. at 333, 334, 336, 337, 342, 343 (Douglas, J., dissenting)].

I do not know how Judge Thomas will rule on affirmative action issues. He does not believe in imparting his personal views into his judging. Moreover, there are Supreme Court cases that have begun to address some of these questions and I do not know Judge Thomas' views on stare decisis.

I do know this: If the proponents of racial and gender preferences and reverse discrimination wish to go after Judge Thomas on these issues, however they dress up these unfair practices with seemingly benign labels and euphemisms or mask them with convoluted rules in new legislation, I and others will be prepared to debate these issues fully, and Judge Thomas' record, in front of the American people.

One last point. Some of the proponents of preferences and reverse discrimination who would prefer to see Judge Thomas defeated understand that they are out of step with the mainstream of the American people. They will seek to cast their opposition in loftier tones, and to look for other excuses—any excuses—to oppose Judge Thomas, to draw attention away from their ulterior reasons for opposing him. Indeed, there is some indication, reported by the Washington Post and elsewhere, that the abortion issue, in addition to being used as an inappropriate litmus test in its own right by proabortion groups, will be used by proponents of reverse discrimination to try to drag Judge Thomas down.

I do not believe such a tactic will work.

Mr. President, I thank my dear friend from North Dakota for allowing me to take this extra 10 minutes, and my friend from Mississippi for the kindness he has shown to me here today.

I yield the floor.

Mr. DOLE. Mr. President, has leader time been reserved?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. If there is nobody here to offer an amendment, and there is no problem with the managers, I would like to take about 2 minutes of that time.

MFN FOR SOVIETS

Mr. DOLE. Mr. President, I am pleased by today's announcement in Moscow that the President intends to submit for Senate approval a comprehensive trade agreement with the Soviet Union, including the granting of most favored nation status.

It is another important step forward on the road to improved and mutually beneficial relations for our two countries. To the extent that it helps foster stability, and improves the prospects for better living conditions for the Soviet people, while at the same time benefiting us—especially by expanding our potential export markets—it is truly a win-win situation.

As I think most Senators know, there is at least one problem that we will have to resolve as we work on the agreement, and that is making sure that approval of the agreement does not compromise our long-held and legitimate position on freedom for the Baltics. But that is something I am confident we can accomplish without scuttling the agreement itself.

So I look forward to the early submission of the agreement to the Senate. I intend to support it and work for prompt passage of the resolution of approval.

Mr. President, I reserve the remainder of my leader time, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

THE 46TH ANNIVERSARY OF A DISASTER—AND COURAGE

Mr. HELMS. Mr. President, today marks the 46th anniversary of what many in the U.S. Navy regard as the greatest disaster in the history of our Navy, the sinking of the U.S.S. *Indianapolis*. But the courage of the fine Americans who died in that disaster, as well as the estimated 900 who escaped the sinking, is a saga of dedication and sacrifice.

Mr. President, it was quite by accident that I began giving thought to this fateful event a few weeks ago. A friend in North Carolina had written to me, making inquiry about various aspects of the disaster. I did not have the answers, so I made inquiry, in turn, of a dear friend of mine who is a retired admiral. Here is his response:

On 28 July 1945, the U.S.S. *Indianapolis* departed Guam for Leyte at approximately 0930 in the morning. She had previously off-loaded the internal components of the Hiroshima Bomb in Tinian on 26 July 1945.

As she steamed through the darkness of the night of 29-30 July 1945, the *Indianapolis* was struck by two Japanese submarine-launched torpedos in her starboard bow at five minutes after midnight. In less than 15 minutes the cruiser had vanished east of Leyte in position 12 degree 02 minutes north latitude, 134 degrees 48 minutes east longitude.

This began the terrible events that proved to be the worst disaster at sea in the history of the U.S. Navy in terms of lives lost. Of the 1,196 brave men assigned to this ship, it has been estimated that 900 escaped the sinking. However, their trials had just begun.

For more than five days these men had to survive in shark-infested waters before rescue was accomplished—and that rescue was totally by accident. Of the 900 who escaped the sinking, only 316 were in fact rescued. Five days of deprivation and horrible shark attacks had taken a deadly toll. It is impossible to imagine the terror these brave men endured.

When we think back through American history, we think of the enormous sacrifice by so many Americans—Valley Forge, the Argonne Forest, Guadalcanal, Iwo Jima, Chosen Reservoir in Korea, the Tet offensive in Vietnam, to name only a few.

But no men who ever fought for our country deserve more esteem than the crew of the U.S.S. *Indianapolis*. A ship is nothing more than steel shaped to the needs and desires of man. The heart, the soul, the very life of a ship, is her crew. The U.S.S. *Indianapolis* had the very best.

On 30 July 1991, we will mark the 46th anniversary of the sinking of that steel form named U.S.S. *Indianapolis*. But the heart and soul of her crew lives on, and will live forever in the minds of the American people.

Mr. HELMS. Mr. President, on this anniversary, Senators and other Americans should take special note of the suffering and sacrifice of the crew of the U.S.S. *Indianapolis* 46 years ago. It was a disaster at sea, yes. But it was a moment when the courage of these superb Americans gave meaning to America. Braver Americans never lived.

RESPONSE TO SPECIAL BOARD REPORT ON RAILROAD CONTRACT

Mr. EXON. Mr. President, I recently read the report of the Special Board appointed by the President under the bill which ended the nationwide railroad strike. The purpose of the Special Board was to review the settlement recommendations of the original Presidential Emergency Board [PEB], change or modify the recommendations as appropriate, and adopt the final package as a binding settlement.

I supported the creation of the Special Board so that rail workers would have a forum in which to express their concerns and have their views fairly considered on the original PEB recommendations.

Unfortunately, when I read the Special Board's report, it seemed the Board's goal was to avoid looking at the real issues in the rail dispute and the PEB report. Instead, most of the Board's report was devoted to tedious arguments over procedure instead of substance. The Board's written opinion had no discussion of the real issues, yet in the end conclusively held that the

The committee also added funds to bring advance simulation technology to bear to improve the training and mobilization potential of our reserve forces, and specifically of the roundout brigades. The development of distributed simulator technology opens entire new opportunities for training reserve forces which are spread out all over a State.

These are just a few of the highlights of the subcommittee's actions this year.

I would like to take this opportunity to thank members of the subcommittee for their contributions during the past year. I especially want to thank Senator WALLOP, the ranking Republican member. He has been a strong and effective leader and has set a tone of cooperation for the work of this subcommittee. The strength of our recommendations is directly attributable to these constructive efforts during markup and throughout the year.

Mr. President, I also want to highlight another very important provision of this bill, regarding environmental cleanup at military bases around the country.

The base closure process has been a very difficult one for many Senators, and for many oommunities around the oountry, including my home State of Michigan. But I want to ensure that whatever bases are closed, there is a full and speedy cleanup of toxic contamination problems at those facilities, so the local communities can have access to the bases for useful purposes.

The committee strongly agrees. I worked with several Senators very closely, especially the chairman of the Readiness, Sustainability and Support Subcommittee, Mr. DIXON, and the Senator from Arizona, Mr. MCCAIN to make sure that environmental cleanup of bases being closed is fully funded. I want to thank those Senators for their efforts.

The administration provided the committee with its most up-to-date estimates of the funding needed for fiscal year 1992, which were significantly higher than the figures provided in the original budget request submitted in February.

The committee bill provides $216 million for environmental cleanup at bases being closed under the 1988 law, and $197 million for bases proposed for closure under the current commission recommendations, which are still subject to final approval. Many of these bases contain multiple contaminated sites, including many on the Superfund national priorities list. In some cases contamination is threatening to migrate beyond base boundaries to expose surrounding communities.

The committee also took steps to ensure close monitoring and full accountability regarding the expenditure of these funds, with semiannual reports required from the Secretary of Defense citing the progress being made at each base. We want to make certain that sufficient funds are provided in separate accounts for cleanup at bases being closed, as well as for still-operating bases where significant environmental restoration and compliance efforts are also required.

Congress will continue to monitor this activity very closely. We all have a responsibility to make sure that cleanup at any base being closed is fully funded and completed expeditiously.

On one other matter, I am very pleased that the committee is authorizing $20 million for fiscal year 1992 for the Defense Department to support work force training programs.

For several years, I have been working with Focus: Hope of Michigan to help provide Federal assistance for the Center for Advanced Technologies, which Focus: Hope is sponsoring. This center, which has already received support from the Federal and State governments and from the private seotor, has the goal of training people to build, operate and repair the high-technology machinery that will become increasingly essential to the production processes of the 1990's and beyond. Given the nature of the defense-related equipment of the future, this goal of a highly skilled work force is particularly important for the defense industrial base. In addition to defense, this project is extremely worthwhile from the perspectives of international competitiveness, education and expanding job opportunities.

I'm glad the $20 million that the committee is recommending for work force training programs is a most useful action.

Programs like the center for Advanced Technologies can utilize it in a way which could serve as a model in other efforts throughout the Nation.

MORNING BUSINESS

Mr. LEVIN. Mr. President, I ask unanimous consent that there be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection it is so ordered.

NAACP LEADERSHIP: OUT OF THE MAINSTREAM

Mr. DOLE. Mr. President, earlier today, the NAACP leadership took a nosedive into the credibility gap by publicly opposing the nomination of Judge Clarence Thomas to the Supreme Court.

Unbelievably, the NAACP leadership claimed that Judge Thomas' philosophy was reactionary and detrimental to the interests of black Americans.

Mr. President, is it reactionary to oppose quotas and other unfair preferences?

Is it reactionary to promote a message of self-help and responsibility?

Is it reactionary to transform the Equal Employment Opportunity Commission from a back water Federal agency to a hardnosed enforcer of our Nation's antidiscrimination laws?

And is it reactionary to be a black American, who also happens to be a Republican and conservative?

Mr. President, it's not Judge Thomas who is out of the mainstream.

It's the NAACP leadership.

The NAACP leadership should come back to America, where equal opportunity and hard work are values embraced not only by Judge Thomas, but by the overwhelming majority of Americans, both white and black.

The NAACP leadership may oppose Judge Thomas, but I have no doubt that the rank-and-file view Judge Thomas quite differently—with the respect and admiration he has earned through a life of determined achievement.

IN SUPPORT OF HONOLULU'S ASSETS SCHOOL FOR DYSLEXIC CHILDREN

Mr. AKAKA. Mr. President, I rise today to bring to the attention of my oolleagues one of Hawaii's most valuable assets. That is, ASSETS school in Honolulu, HI. This school serves a special population of dyslexic students, as well as gifted and dyslexic/gifted students in my State.

ASSETS school has been teaching the hidden achiever for 36 years. It began in 1955 with three teachers and two students. The school has grown to 300 students and a full-time staff of nearly 60 dedicated professionals. Today, it is the largest school of its kind in the Nation and has became a nationally recognized resource.

ASSETS is unique in another way, because it represents a special partnership between the private sector and the Federal Government. When the school started 36 years ago, it was the U.S. Navy at Pearl Harbor that provided ASSETS' home in the form of a quonset hut.

Today, the Navy has come to the rescue again by providing ASSETS with a site for its new campus. This unique relationship between the Navy and the civilian community has made it possible for Hawaii to offer one of the finest schools for the learning disabled and gifted children in the United States.

In addition to its regular kindergarten through eighth grade day school, ASSETS has an Outreach Program, summer school, summer science academies, and adult night school courses for both public and private school students and their families. In addition, the testing and diagnostic capabilities at ASSETS are the most comprehensive in the State of Hawaii.

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smoking cigarettes; I could make it fine with no cream or other high-fat foods. But not steak. I would have to eat a steak now and then. "Sure," she said. "That's no problem."

"How often can I have it, then?" I asked.

"Oh, probably two times a year."

Well, so much for steak.

I'm religious (but not fanatical) about early-morning walks and pray I'll never smoke another cigarette. Before my attack, I knew they were bad for your lungs, but didn't know how deadly they were for the heart. Today, I know.

There's a wonderful community of heart patients out there. I'm now a member of their club. I can talk the language. It does us good to talk to one another and compare notes. Not only is it a catharsis, but an education. Each day, I learn something new about my heart from others in "the club."

Almost daily, some perfect stranger comes up and says, "Senator, I had a triple two years ago—never felt better."

Some 3,000 to 4,000 people sent me cards and letters. I read each one. A fifth-grader from Conway wrote, "Senator, we heard you had died and we're glad it wasn't true. Welcome back."

A wonderful 83-year-old woman from Arkadelphia not only wrote me, but had her niece take a picture of her holding a "Pryor" fan, one of the hand-held fans we gave out during campaigns. She thought it might cheer me up. In late May, I was saddened to see her obituary and that she had died of cancer.

There is a basic unvarnished goodness about the people of Arkansas. There is an unpretentious caring and generosity that comes out when one of us need courage or compassion. Once again, as they have during my 30 years of public life, our people gave me hope and strength.

Well, so much for having a heart attack. Now, it's restructuring time. I refuse to become a professional heart attack victim. I hope that I'll not be known as "David Pryor, who suffered a heart attack in 1991 . . ." Surely there must be something better for which to be remembered.

On June 11, I wrote my colleagues in the Senate. Let me share a few lines of my letter:

"I hope none of you will accuse me of 'preaching' when I close this update by simply saying this to those I care for deeply. Be very careful. Care for yourself. Each of you is a very special human being. Pause every now and then. Take a deep breath. No one but you can decide what is really important.

"Reach out and touch your family. Gather them around you, find strength in your real friends who care. Take some time for yourself, by yourself. Only when life is nearly taken away do we realize how fragile it is and come to know the value of our friends. Thank you for caring. Sincerely, David Pryor."

TRIBUTE TO THE LATE JO OBERSTAR

Mr. WELLSTONE. Mr. President, my wife Sheila and I and my entire staff are saddened by the death July 28 of Jo Oberstar, wife of Congressman JAMES OBERSTAR of Minnesota.

Our hearts and sympathy go out to JIM and their children and to his staff. All the people of the Eighth District and of the entire State share their loss.

Jo was a terrific person. She was intelligent, poised, warm, and courageous. She pursued her own career and at the same time was very much involved in JIM's career in Congress. She was equally at home in Washington and on the campaign trail in Minnesota.

Jo was director of J.O. Associates, a private, nonprofit professional development organization in Washington. She also was active with the Canadian Centre for Legislative Exchange, which helped bring Members of the Canadian Parliament to Washington.

She received a bachelor's degree from Trinity College in Washington and a master's degree from Yale University. She had taught high school, been a legislative assistant for Congressman John Blatnik and been a director of the Isaak Walton League. She was also a board member of the National Rehabilitation Hospital in Washington and Peace Links, which promotes awarness of nuclear issues.

She was a wonderful mother and a loving wife. She had a zest for life that was unmatched. We will miss her greatly.

SPECIAL INTEREST GROUPS THREATEN TO DESTROY INDEPENDENCE OF THE JUDICIARY

Mr. HATCH. Mr. President, special interest groups seeking to impose litmus tests on judicial nominees as a precondition of their confirmation threaten to destroy the independence of the Federal judiciary. The single-minded, rule-or-ruin desire to assure preordained votes on particular issues is an assault on the role of the judiciary as a coequal branch of our tripartite central government. The drive by special interest advocacy groups to achieve short-term political gain by blocking a nominee they believe will disagree with them on a particular issue or set of issues will do long term—and perhaps permanent—damage to the judiciary as an institution.

The independence of the Federal judiciary is equally important to all Americans. This is not a liberal or conservative issue. Liberals and conservatives should be equally troubled by any threat to judicial independence. Regardless of one's views on affirmative action, church-state relations, the first amendment, or abortion, the Senate should not be party to efforts to diminish the independence of the judiciary for the sake of assuring that particular cases or issues are decided in a manner satisfactory to some or most Members of the Senate.

Americans expect that each Federal judge and each Supreme Court Justice will fairly assess the merits of every case as the judge or justice sees them. Americans do not want any category of cases or issues decided in advance. They want judges to be free to call them as they see them. Indeed, I am confident that Americans do not expect a judicial nominee to have a firmly fixed view in advance on every issue that may come before him or her. As the late Prof. Alexander Bickle of Yale Law School once said:

> You shoot an arrow into a far distant future when you appoint a Justice, and not the man himself can tell you what he will think about some of the problems that he will face.

I should add that even on those legal issues on which a nominee has a general inclination, the nominee is entitled to change his mind once he assumes the responsibility of membership on the highest court in the land, reviews the facts of particular cases, and assesses the legal arguments on both sides.

Americans do expect the President to select, and the Senate to confirm, able judges of powerful intellect. They expect, on the bench, men and women who perform the judicial function with integrity, fairness, and with their minds and hearts open and focused on the case before them. Americans do not want judges deciding cases based on express or implied commitments to the President, the Senate, or individual Senators. Americans do not want judges deciding cases based on what some special interest advocacy group will think about me decision.

Judicial nominees, including Judge Clarence Thomas, are not running for political office. Their fitness is not determined by whether they can win a popularity poll, and their task is to make the right decision, not the popular decision. That task is too important to be sacrificed on the altar of political correctness.

I was disturbed to see that a poll on Judge Thomas had been taken and publicized within hours of President Bush's announcement of his nomination. I do not question the right of a news organization to take and broadcast such a poll. In my view, however, it disserves the American people to reduce a Supreme Court nomination to the level of popular referendum. I make this point even though the poll I saw was highly favorable to Judge Thomas.

I would add another point about popular opinion and the judicial function. Judging is a function that is supposed to be insulated from outside pressure, both from the other two branches of government and the expression of the popular view of the moment. The role of the judge is to enforce the provisions of the Constitution and the laws enacted by the legislature as their meaning was originally intended by their framers. It is not to substitute the policy preferences of the judge, or the prevailing popular viewpoint, for the law. The guarantees of the Bill of Rights, for example, do not turn on what a majority of Americans believe they mean. Federal judges, indeed, often have to make decisions unpopular with the

President, Congress, or the people. That is why they have life tenure.

There are special interest groups trying to mislead the American people into believing that if a nominee does not commit to their position on an issue or set of issues, the nominee is unfit. Some of these same groups would also have the American people believe that if a nominee does not commit in advance to a position presumably held by a majority of Americans, the nominee is similarly unfit. Nothing could be further from the truth or more damaging to the independence of the judiciary than those two propositions. A judge must follow the law as he or she best sees it, not public opinion polls or the desires of special interest advocacy groups. This is something to be kept clearly in mind as the political-style campaign against Judge Thomas appears to be getting underway, complete with mass direct mailings, possible media advertising, and similar components of an electoral campaign.

The American people will lose much more in the long run from a loss of judicial independence than they would gain if Senate confirmation of a Supreme Court Justice is made to turn on the nominee's agreement in advance with a popular majority on one issue or another, let alone on agreement with special interest advocacy groups.

I do not know how Judge Thomas will rule on abortion issues when he is confirmed, and neither does anyone else. But there are two things I do know:

First, Judge Thomas, when confirmed, will cast one vote, not five. He cannot decide any case or resolve any issue by himself.

Second, the legal correctness of the Roe versus Wade decision, and the legal question as to whether it should be overturned, has as much to do with popular opinion as popular opinion had to do with the legal correctness of the separate-but-equal ruling in Plessy versus Ferguson and the legal question as to whether it should have been overturned. That is to say, popular opinion is not relevant in either case.

If popular sentiment runs against judicial decisions, the people may resort to their legislatures for relief or to the ballot box to replace the President who nominates the judicial nominees; that is the American way. But while the Senate appropriately takes popular opinion into account when voting on legislation, in my view, the Senate should evaluate a judicial nominee on his or her qualifications to serve, not on the basis of polls or the demands of pressure groups. Senate consideration of judicial nominations should be above politics.

In fact, Mr. President, with respect to the abortion issue, many legal scholars across the spectrum have criticized that controversial decision. Let us suppose the Supreme Court overturns Roe versus Wade. What would be the result? It would be up to elected State legislators to decide whether to regulate or restrict abortion, and if so, how. So if the American people feel that abortion should be available in certain circumstances, those views can be given effect through the political process even if Roe versus Wade is struck down as an unsound reading of the Constitution.

I note, Mr. President, that the threat to the independence of the judiciary can come from the political right or left, and from prolife or pro-abortion forces. Such threats should be opposed in all instances. Indeed, I remember the concern prolife groups expressed about the nomination of Sandra Day O'Connor. Liberals then were quick to assert that litmus tests have no place in the confirmation process. They correctly defended an independent judiciary as more important than short-term efforts to impose judicial outcomes on particular issues by the tactic of blocking Senate confirmation unless concessions are wrung from nominees as to how they will vote. And, those same liberals insisted that the President not impose litmus tests in selecting a nominee. They were right. But neither should the Senate impose any such litmus tests, for the same reasons.

Today, the threat to the independence of the judiciary comes from the political left and pro-abortion forces.

I was encouraged, Mr. President, by the remarks of Governor Mario Cuomo, cited in the July 5, 1991, New York Post on this general point. The article noted:

> Cuomo * * * told the Post he also believed Thomas, at confirmation hearings * * * should not be questioned directly on his abortion views or on how he would rule on specific cases such as the * * * Roe versus Wade decision. And, Cuomo said, if Thomas is asked where he stands on such issues, he should decline to answer. "His answer should be: I'll call it after the pitch is thrown, I'll tell you whether it is a ball or a strike after it crosses the plate," said Cuomo.

Mr. President, I ask my colleagues what would have happened if, in the early 20th century and beyond, special interest business groups convinced the Senate to refuse to confirm Supreme Court nominees who did not commit to preserve precedents which had struck down State social welfare legislation, such as minimum wage and maximum hour legislation?

Suppose, Mr. President, segregationist organizations had pressured the Senate to reject Supreme Court nominees not committed to preserving the odious separate-but-equal doctrine of Plessy versus Ferguson, and the Senate had acquiesced in that pressure? Would the Supreme Court ever have overthrown the Plessy versus Ferguson doctrine, as it finally did in 1954 in Brown versus Board of Education?

Ben Wattenberg, a Democrat who is a senior fellow at the American Enterprise Institute, says that quotas should be the litmus test. He criticized a 5-4 decision from June 1990 permitting racial set-asides in the FCC's award of television and radio licenses. Suppose 20 Senators apply that litmus test, and 15 other Senators apply a church-state litmus test seeking to reverse the school prayer decisions, and 15 other Senators impose a litmus test on reversing both the Miranda decision concerning police questioning of arrestees and Mapp versus Ohio imposing the exclusionary rule on the States—not only compelling answers to questions on these matters as a precondition to confirmation, but voting against the nominee if we do not like the answers?

How can any nominee be confirmed if we viewed our role this way?

A President may one day send us a nominee supported by pro-abortion groups. How would they feel if other Senators and I took up Ben Wattenberg's cue on imposing a litmus test on reverse discrimination, another group imposed a litmus test on overturning Miranda as well as the exclusionary rule, and a third group of prolife Senators, totaling 51 Senators, imposed a litmus test on reversing Roe versus Wade?

There is a better process for the Senate to follow in handling Judge Thomas' nomination. It is a process reflecting the long-standing traditions of the Senate, traditions that have sometimes been discarded in the last 35 years but that we should restore. It is that process that I wish to speak about for the next several minutes.

In my view, the Constitution clearly gives the President principal responsibility for judicial selection. The Framers rejected vesting the appointment power in both Houses of Congress or in the Senate alone. Article II, section 2, reads in relevant part: "* * * he shall nominate, and by and with the advice and consent of the Senate, shall appoint * * * judges of the Supreme Court. * * *" The President is entitled to nominate a person who reflects the President's view of the general role of the judiciary in our tripartite system of Government. He is not entitled to seek assurance on how a nominee will vote on particular issues.

The Senate is given a checking function through its advice and consent power. It does not have a license to exert political influence on the judicial branch or to impose litmus tests on nominees. Nor is the Senate entitled to seek the assurances on how a nominee will decide particular issues that the President may not seek. The very function of judging requires independence to weigh the facts of individual cases, to consider the arguments of counsel, and to make up one's mind when confronted by both.

Judge Thomas is not running for political office, nor has the President nominated him to a policymaking posi-

tion in the executive branch. He has been nominated for the highest court in a coequal branch of the Federal Government.

As Alexander Hamilton wrote in Federalist 76 about the Senate's advice and consent function in general, the Senate's "concurrence would have a powerful, though, in general, silent operation. It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from state prejudice, from family connection, from personal attachment, or from a view to popularity."

I note that prior to 1925, no Supreme Court nominee had even testified before the Senate. The few nominees who appeared before the Judiciary Committee in the following 30 years were not questioned about judicial philosophy or their views on legal matters. When Felix Frankfurter accepted an invitation to testify before the Judiciary Committee in 1939, he made it clear that he did not want to do so. Indeed, he declined to appear on the initial day of the committee hearings, sending Dean Acheson in his place, because he did not wish to miss a day of teaching. So, he showed up before the committee on the second day.

[Thorpe, "The Appearance of Supreme Court Nominees Before the Senate Judiciary Committee," 18 Journal of Public Law, 371, 376, 377 n.29 (1969) [hereinafter, "Thorpe".]

In his opening statement, Frankfurter said,

I, of course, do not wish to testify in support of my own nomination. * * * While I believe that a nominee's record should be thoroughly scrutinized by the committee, I hope you will not think it presumptuous on my part to suggest that neither such examination nor the best interests of the Supreme Court will be helped by the personal participation of the nominee himself.

I should think it improper for a nominee * * * to express his or her views on any controversial issues affecting the Court.

He mentioned that his attitude and outlook had been expressed over a period of years and are readily accessible. Frankfurter said that it would be "inconsistent with the duties of the office * * * for me to attempt to supplant my past record by personal declarations."

One nominee, Sherman Minton, even refused an invitation to testify altogether, explaining that "personal participation by the nominee in the committee proceedings relating to his nomination presents a serious question of propriety, particularly when I might be required to express my views on highly controversial and litigious issues affecting the court."

Since the 1950's, I think it is fair to say without oversimplifying that when some conservative Senators had concerns that a Supreme Court nominee would rule in a manner displeasing to them, in some instances they asked the nominee questions about current legal issues of interest to them. Similarly, since the 1950's, when some liberal members of the Judiciary Committee had concerns about the way a particular nominee might rule in the future, they have asked questions addressing current legal issues.

One commentator has remarked that the appearances of the nominees before the Senate "have tended on occasion to subject nominees to hostile questioning, character assassination, and ridicule." [Thorpe] And that comment was made in 1969.

In my view, while Senators are free to ask a nominee any question they wish, a Supreme Court nominee should answer questions related only to his ethics; competence, including the ability to communicate well both orally and in writing; legal ability; general view of the role of the Supreme Court in our Federal system; willingness to separate personal policy views from one's judicial decisionmaking; and independence of mind, that is, did he make any commitments on issues that might come before him in order to be nominated—or confirmed?

If the Senate probes into the views of a nominee on particular legal issues or public policies, let alone imposes direct or indirect litmus tests on specific issues or cases, the Senate impinges on the independence of the judiciary. It politicizes the judging function. The confirmation process becomes a means to influence the outcome of future cases on issues of concern to particular Senators. And, a nominee may feel that in order to be confirmed, he must agree with this or that Senator on particular legal issues that are within the province of the judiciary. An appearance of a lack of impartiality will arise when those issues later come before the justice. This course is as inappropriate as it would be for the President to seek such influence. The judiciary is the one branch that should be above politics.

A few years ago, the Twentieth Century Fund assembled a distinguished task force to consider the way the Federal judiciary is selected. Former New York Gov. Hugh Carey chaired the task force. Its other members included Prof. Walter Berns of Georgetown University and the American Enterprise Institute; former Secretary of Health, Education, and Welfare, Joseph A. Califano, Jr.; Lloyd N. Cutler, former counsel to President Carter; University of Chicago Law Prof. Philip B. Kurland; Jack W. Peltason, Chancellor of the University of California, Irvine; Nicholas J. Spaeth, attorney general of North Dakota; Michael W. Uhlmann, former Reagan White House official; and Robert F. Wagner, the former mayor of New York City.

In 1988, the task force issued its report, Judicial Roulette. With Mr. Califano and Mr. Cutler dissenting, the task force recommended that—

Supreme Court nominees should no longer be expected to appear as witnesses during the Senate Judiciary Committee's hearings on their confirmation. * * * The task force further recommends that the Judiciary Committee and the Senate base confirmation decisions on a nominee's written record and the testimony of legal experts as to his competence.

The task force added, with Mr. Califano dissenting,

But if nominees continue to appear before the committee, then the task force recommends that senators should not put questions to nominees that call for answers that would indicate how they would deal with specific issues if they were confirmed.

My fear is that if the Senate continues the trend begun in the 1950s, which seems to have accelerated since then, with both liberal and conservative Senators pressing Supreme Court nominees beyond the bounds I have described, we could permanently undermine the independence of the Judicial Branch. We will move closer to the circumstance described by Alexander Hamilton in Federalist 78, wherein the courts exercise will rather than judgment and tend to become a mere extension of the Congress. That the will exercised by the Justices will be shaped by implicit or explicit commitments made to Members of the Congress rather than by the Justices' own policy preferences, as Hamilton warned against, makes no difference. The judiciary will lose its independence if the Senate seeks to substitute its will on particular issues for the reasoned judgment of the Court. And the American people will lose a safeguard against overreaching by Congress. The American people will also lose the assurance that every case will be fairly and impartially decided.

Mr. President, I call upon, in particular, the liberal members of the bar, as well as commentators who are concerned about our system of justice, to come to the defense of an independent Federal judiciary and oppose the imposition of litmus tests on this nominee.

THE JUSTICE DEPARTMENT: TAKING THE LEAD AGAINST BCCI

Mr. DOLE. Mr. President, America is justifiably outraged about the criminal activities of BCCI—now known as the "Bank of Crooks and Criminals Incorporated."

The press allegations against BCCI are a laundry list of criminal wrongdoing—a multibillion-dollar money-laundering operation, widespread evasion of our Nation's banking laws, and a bribery scheme supposedly implicating high government officials in this country and elsewhere.

But, Mr. President, if you just listened to the liberal media and some of the politicians here in Congress, you would think that Federal prosecutors were asleep at the switch, and even worse, were actively hindering efforts to bring the BCCI crooks to justice.

SUPPORT FOR SECRETARY BAKER'S STATEMENT ON BURMA

Mr. MOYNIHAN. Mr. President, I would like to take just a few moments to express my support and I believe that of the Senate for the words spoken about Burma by Secretary of State Baker at his recent meeting with the ASEAN ministers in Kuala Lumpur, Malaysia. He was forceful, direct, and principled in stating the strong opposition of the United States to the regime in Rangoon. He was also clear that ASEAN must accept some responsibility for the tragedy in Burma. And ASEAN must act, as must the United Nations, to end this horror.

On July 24, in response to a reporter's question about the difference in view between the United States and ASEAN over Burma, Secretary Baker stated:

> we would like to see ASEAN use whatever influence they have, individually or collectively, in order to move the Burmese government toward greater respect for human rights, greater respect for political pluralism, freedom for political prisoners, respect for the election they have just concluded, and if possible some semblance of economic freedom and progress for the people of Burma. And you're quite right—we have a different position with respect to this issue than does ASEAN. We have a disagreement here.

Indeed. Economic exploitation of the Burmese people and their resources by ASEAN is nothing more than plunder and opportunism of the worst type. It is inexplicable that neighbors would do such to another. Especially nations that claim to be victims of exploitation in the past.

The country with the most regrettable record in this regard is Thailand. All nature of quick money schemes have been agreed to. Primarily the result of strong ties between the Burmese and the Thai military. Lest the world had begun to believe that civilian control and democratic institutions had finally taken hold in Thailand, the military coup of February reminded us once again of how much the Thai and Burmese military continue to have in common. Singapore and Malaysia also have committed wrongs against the Burmese people. More, China is now Rangoon's largest arms supplier. Compare the record of these nations to the steady opposition of India to the Rangoon regime. The difference comes down to that India is a democracy.

Mr. President, it is indeed regrettable that ASEAN was not more forthcoming. Perhaps if they won't support United States initiatives on Burma, they will not block strong action at this year's meeting of the General Assemhly of the United Nations. We can only hope, and remember that Daw Aung San Suu Kyi remains imprisoned as Thai military officers continue to enrich themselves from Burma's tragedy. We are proud of the words of the Secretary of State, and we will encourage ever more action by the President against the regime in Rangoon and against those that would support it.

CLARENCE THOMAS NOMINATION

Mr. SIMPSON. Mr. President, the nomination of Clarence Thomas has elicited much praise from a number of sources, and I do not wish to distract us from that praise.

This is an intelligent and well qualified judge whose personal skills, determination, and perseverance should serve as a model to us all.

While I wish to address some of the critics of the Thomas nomination, I wish to start by noting what a fine choice President Bush has made.

Some critics have referred to Judge Thomas' nomination as a quota appointment.

I find that charge to be motivated by pure partisan politics.

As Senator DOLE said earlier, none of Judge Thomas' current critics would call his nomination a quota appointment if he were a liberal democrat.

In addition, let us dispel once and for all this analogy between the civil rights bill's quota debate and a supreme court nomination.

U.S. employers have complete freedom to choose whom they employ; it is only legislation—such as the democrat's civil rights bill—that can force certain hiring decisions on employers.

The president, on the other hand, must obtain the consent of a political branch of government—the U.S. Senate—of his choice for a supreme court justice. So yes, I suppose there were political considerations in President Bush's choice. But that is only because his choice must be approved by a body very much infested with politics—the U.S. Senate.

Some have mentioned that Judge Thomas has benefited from the gains achieved by earlier civil rights leaders.

Judge Thomas has told members of the committee that he was the beneficiary of the work of people and organizations like Thurgood Marshall and the NAACP.

While he has clearly expressed his opposition to quotas, I have not heard him oppose traditional affirmative action.

And I have no doubt that affirmative action played a part in the selection process on this nomination.

However, I'm referring to the original notion of affirmative action, which has universal support: Where an effort is made to increase the number of members of under-represented groups in the pool of applicants.

I am certain that the President asked that qualified women and minorities be included in the pool of possible nominees he would consider for the appointment.

However, the person selected from that pool was fully qualified for the Supreme Court: As the President said, Judge Thomas was the best candidate for this nomination.

I oppose quotas, as does the President and the nominee. However, I support this kind of affirmative action.

A quota appointment would be one where a minority would be required to be chosen from the pool. This did not happen.

Affirmative action merely requires us to enlarge and diversify the pool of applicants.

The difference between affirmative action and quotas is as clear as day to me—and to most Americans who oppose quotas. For some reason, certain liberal critics are incapable of making this distinction.

I believe the Black Caucus' opposition to the nomination is based solely on the fact that Judge Thomas is not a liberal.

Indeed, there was a dissenting vote in the Black Caucus: The able new Congressman, GARY FRANKS, dissented from the Caucus' opposition.

All other members of the Caucus are democrats, and most are politically liberal.

While everyone has the right to an opinion on the nomination, I believe the Black Caucus' position is based on political ideology, and not any other factor.

I also have a right to accept either the majority or the dissenting position of the Black Caucus, and I choose to accept the dissenting position of Congressman GARY FRANKS.

A number of pro-choice groups have already stated their opposition to Judge Thomas.

I am pro-choice, and I vote that way consistently, but I believe this opposition is not well-founded.

We should not base our decisions on how a Justice might rule on a single issue.

I am not the only one who feels that way.

The democrats in the House of Representatives just elected a capable and respected Congressman as their majority whip—DAVID BONIOR—even though he is on the record as pro-life.

The democrats in the House of Representatives obviously did not judge a person's qualifications for high office on a single issue.

Neither should, nor neither will, the Senate Judiciary Committee base its confirmation decision on where we believe Judge Thomas sits on the difficult question of abortion.

We will not judge this man based on his potential views on a single issue—just as the House does not judge its members based on their views on a single issue.

I do not believe that the revelation that Judge Thomas tried marijuana a few times while in college is at all significant.

I agree with the White House's analysis: Isolated youthful experiments on

Judge Thomas' part are inconsequential.

I also agree with Senator GRASSLEY'S reaction: Clarence Thomas is not a candidate for sainthood, he's a candidate for the Supreme Court.

Finally, I should note that a number of prominent and respected politicians have also admitted trying marijuana in their youth. My answer to that is so what? Let get on with getting this fine man confirmed. We'll be ready for the rule-or-ruin fellows and the plash-and-burn corps that marauded the Judiciary Committee during the Bork hearings. I'm excitedly looking forward to September.

BOB STRAUSS TO MOSCOW

Mr. DOLE. Mr. President, this week the Senate confirmed the nomination of Bob Strauss to be our new Ambassador to the Soviet Union.

Bob Strauss happens to be a close friend of mine, and of many in the Senate, from both sides of the aisle.

But my enthusiasm for this nomination goes way beyond personal friendship. Bob Strauss is truly the right man, at the right time, for this tough, tough job.

The nomination of this towering figure in the Democratic Party to the critical post of ambassador in Moscow reflects and underscores President Bush's conviction that partisanship stops at the water's edge.

His nomination also reflects the President's belief that the kind of ambassador we need now, in this huge and powerful country in the throes of revolutionary change, is not an ideolog; not a striped-pants traditionalist; but a cool, tough pragmatist. In Bob Strauss, that is what you see, and that is what you get.

Having been to Moscow several times over the past few years—having seen the hardships of life in that country; knowing of the incredibly tough issues Bob Strauss will face—I'm not sure I should congratulate Bob Strauss on undertaking this new job. But I believe I speak for all Senators in offering our best wishes, and our appreciation for his willingness to do this real public service.

And I do want to congratulate the President. He made a great choice, and Bob Strauss will make a great ambassador.

THE PRESIDENT'S POSITION ON CIVIL RIGHTS

Mr. METZENBAUM. Mr. President, it was with great disappointment that I read this morning's press reports regarding the President's rejection of Senator DANFORTH'S most recent civil rights proposal.

The President's explanation for rejecting the latest initiative offered by my colleague from Missouri is that it interferes with the administration's education agenda. Specifically, in his July 28 letter to Senator DANFORTH, the President stated that

> [e]nsuring that Griggs is preserved is far better than broadly legislating new rules that say employers cannot use educational standards in hiring decisions except in limited circumstances.

That explanation is unacceptable as a matter of law, as a statement of fact, and as an issue of public policy.

First, the fundamental principle announced by the Supreme Court in the 1971 Griggs decision was that an employer would not be permitted to use hiring or promotion practices which disproportionately exclude women and minorities from employment opportunities unless the employer could show that the practices were related to job performance. A recent study by the law firm of Fried, Frank, Harris, Shriver & Jacobson for the NAACP Legal Defense and Educational Fund, Inc. found that in 96 percent of all of the post-Griggs, pre-Wards Cove title VII disparate impact cases the courts used such a job-relatedness standard.

The President's most recent disagreement with Senator DANFORTH focuses in principal part on this very issue. The President insists that Griggs was not premised on a showing of job relatedness, but that a much broader standard of "legitimate employment goal" could apply even to hiring and promotion practices. The Fried, Frank study convincingly shows that view to be incorrect as a matter of law. I ask unanimous consent that a summary of the study be reprinted in the RECORD.

Second, the President's explanation is unacceptable as a statement of fact. The suggestion from the President's explanation is that his bill would "ensure that Griggs is preserved," while the Danforth proposal would "broadly legislate new rules that say employers cannot use educational standards in hiring decisions except in limited circumstances." Both assertions are simply incorrect.

The President's bill, like the Danforth proposal, adopts two business necessity standards, only one of which relates to job performance. The difference between the two proposals is that the administration would allow employers to choose which standard to use in defending discriminatory practices, while the Danforth proposal would require hiring and promotion practices to be defended based on their relationship to job performance.

Thus, the President's proposal would not preserve Griggs at all, but would overturn it instead by codifying the Supreme Court's Wards Cove decision. That decision, like the President's proposal, allows employers to use discriminatory practices (such as minimum height or weight requirements) even if they have nothing whatsoever to do with job performance.

Conversely, the Danforth proposal would not preclude the use of educational standards except in limited circumstances, as the President has suggested. Instead, employers would be free to use such standards as hiring criteria for any position, even if they have a discriminatory impact on women or minorities, provided that they are related to job performance.

Third, the President's statement suggests that civil rights are of trivial importance in comparison to our commitment to education. That suggestion is unacceptable as a matter of public policy. I am sure that no one in this body would disagree with the notion that employers can and should use educational requirements as hiring criteria if those requirements are related to job performance. But if they are not so related, and if they screen out otherwise qualified women or minorities disproportionately, why should we allow employers to use them? Indeed, the National Education Association has stated that arbitrary, unrelated employment practices do not promote educational achievement. That is why the NEA expressed strong disagreement with the President's position, calling it "dangerous and untenable." I ask unanimous consent that the NEA's letter to Senator DANFORTH be reprinted in the RECORD.

In sum, we must now look to move civil rights legislation immediately upon our return from the August recess. I have some problems with Senator DANFORTH'S proposals, but I applaud his tireless efforts on behalf of all hard-working Americans, and I look forward to working with him toward resolution of our differences. We must make the passage and enactment of civil rights legislation a top priority, even if we are forced to override a Presidential veto, in order to restore the rights and protections the Supreme Court stripped away in a series of 1989 decisions.

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.,
WASHINGTON, DC.

HOW THE FRIED, FRANK STUDY RELATES TO THE CURRENT DEBATE OVER THE CIVIL RIGHTS ACT OF 1991

According to Senator JOHN DANFORTH, who has been negotiating with the White House over the Civil Rights Act of 1991, the single issue that divides him and the Administration is whether employers should be able to impose job qualifications that screen out large numbers of qualified minorities and women and have nothing to do with the ability to perform the job. The White House position is that employers should be permitted to do this. Senator DANFORTH believes they should not.

The White House insists that when a company is sued for job discrimination, it should not be required to show that its workers were selected based on their ability to do the job, even if the company's job requirements disproportionately excluded qualified female or minority applicants. This legal standard is codified in the Administration's civil rights bill.

Upon his return from one such expedition to the Churchill River Sigurd reflects, in "*The Lonely Land*,"

I also knew there were some things that would never be dimmed by distance or time, compounded of values that would not be forgotten: the joy and challenge of the wilderness, the sense of being part of the country and of an era that was gone, the freedom we had known, silence, timelessness, beauty, companionship and loyalty, and the feeling of fullness and completeness that was ours at the end.

Through his words and his work Sigurd Olson has given us all values that should not be forgotten. His challenge to us all—to preserve nature for future generations—is one from which we should never be deterred.

The honor which the National Wildlife Federation bestows upon Sigurd Olson is one which he truly deserves. With his induction into the Conservation Hall of Fame, we thank Sigurd Olson for the words he gave us, the lands he saved for us, and the world he left us.•

JUDGE CLARENCE THOMAS

• Mr. DANFORTH. Mr. President, my office and Senator SIMPSON's office have assembled a number of news articles concerning Judge Clarence Thomas, the President's nominee to the Supreme Court. I ask unanimous consent that these articles be placed in the CONGRESSIONAL RECORD.

The articles follow:

JUDGE CLARENCE THOMAS

Judge Thomas was born on June 23, 1948 in Pinpoint, Georgia, a rural community outside Savannah, to Leola and M.C. Thomas. He was reared by his grandparents, Myers and Christine Anderson. After graduating from high school in 1967, he attended Immaculata Conception Seminary in Conception Junction, Missouri. He subsequently entered Holy Cross College in Worcester, Massachusetts, from which he was graduated with honors in 1971. In that same year, he enrolled at Yale Law School and was graduated in 1974.

Following graduation, and until 1977, Judge Thomas served as an assistant attorney general in the office of Missouri Attorney General John C. Danforth, where he represented the State of Missouri before trial and appellate courts, including the Supreme Court of Missouri. From 1977 until 1979, Judge Thomas worked as an attorney in the Legal Department of the Monsanto Company. In 1979, he joined the staff of Senator Danforth as a legislative assistant.

In 1981, Judge Thomas was appointed by President Reagan to be Assistant Secretary for Civil Rights at the Department of Education. A year later, he was appointed Chairman of the Equal Opportunity Commission. He was reappointed Chairman of the EEOC in 1986.

In October 1989, Judge Thomas was nominated by President Bush to the United States Court of Appeals for the District of Columbia Circuit.

Judge Thomas was confirmed by the United States Senate on March 6, 1990, and has served on the Court of Appeals since March 12, 1990. He, his wife Virginia, and his son Jamal live in Northern Virginia.

Editorial Support for Supreme Court Nominee Judge Clarence Thomas

"Judge Thomas is precisely the kind of jurist President Bush assured voters he would select. He would take the Constitution seriously and apply the laws equally. We eagerly await the beginning of many years of service by Justice Clarence Thomas." (Wall Street Journal, July 2, 1991).

"* * * even those who have disagreed with him on policy grounds will concede that his life, which began in extreme poverty, has been one of accomplishment. If confirmed, he would bring to the court a range of experience not shared by any other sitting justice." (The Washington Post, July 2, 1991).

"It is said that the finest steel is tempered in the hottest fires. If true, Judge Clarence Thomas, President Bush's nominee for the U.S. Supreme Court, is a man of fine steel. A child of poverty reared by grandparents in a tenement lacking indoor plumbing, Judge Thomas, through strength of character and with the devoted help of his grandparents, has constructed for himself an exemplary life, a life that raises a standard to which future generations of Americans may repair. * * * President Bush has clearly found a nominee whose character, integrity and intellect equal those of Justice Marshall." (Dallas Morning News, July 2, 1991).

"When Clarence Thomas paused yesterday to look back over an improbable life that has taken him from poverty in the segregated South to the threshold of the Supreme Court of the United States, he was suddenly so overcome with emotion that he couldn't speak. It was a moment with deep emotional significance for the nation as well. * * * Bush could have found many nominees who could have counted on easier approval by the Senate. Thomas will probably require a harder fight, but there is reason to think be's worth it." (Chicago Tribune, July 2, 1991).

"In tapping Clarence Thomas to fill the Supreme Court seat of Thurgood Marshall, President Bush has chosen one of the most promising jurists in the nation. Despite his relatively youthful 43 years, Mr. Thomas already has shown that he possesses a brilliant legal mind and a commitment to public service in the best sense of that term. * * * President Bush has picked the right person. Tbe Senate should move quickly to confirm Clarence Thomas." (The Washington Times, July 3, 1991).

"President Bush has made a superb choice in selecting Federal Appellate Judge Clarence Thomas. * * * In Thomas, the President has chosen a highly capable jurist who has led an extraordinary and exemplary life. * * * [But] liberals don't believe blacks have the same rights to adhere to whatever views they happen to espouse as do white Americans. Democrats see blacks like Thomas as an affront to their firm faith that they—even if white—'know what's best for blacks.' * * * The Clarence Thomases of America are believed to owe the nation an explanation as to why they oppose liberal orthodoxies. * * * Thomas owes no one anything simply because he's black." (New York Post, July 3, 1991).

"His nomination acknowledges the political diversity, often overlooked, among black Americans. * * * With the exception of the hearings over the nomination of Bork, the Judiciary Committee has taken too much refuge in the pieties of Presidential privilege of nomaination and of protection of judicial 'independence,' avoiding issues of personal philosophy. * * * The Senate has the constitutional cbarge to examine his fitness. And notwithstanding his commendable life experience, the Senate should examine him with great thoroughness." (Miami Herald, July 3, 1991).

"Thomas' legal training and political experience appear to qualify him for a seat on the nation's highest tribunal. * * * Senator Metzenbaum is surely correct in hoping to pin Thomas down on this sensitive area [right to privacy] of interpreting the Constitution. Nonetbeless, senators will labor under the same limitation as they did during the Souter hearings: It would be wrong for senators to ask point-blank questions about how Thomas would vote on a Roe v. Wade appeal. * * * Senators should stick to asking Thomas about his constitutional reasoning, not his desired result." (Cleveland Plain Dealer, July 3, 1991).

"Instead of viewing Judge Thomas' conservative philosophy in wonderment, we should wonder why traditional civil rights leaders have abandoned it. * * * Since when are blacks Uncle Toms for espousing the bedrock values of their grandparents? * * * Attempting to deny blacks the diversity of political thought that whites take for granted is itself racist. Clarence Thomas brings oldtime, African American values of survival and determination to the highest court in the land." (Atlanta Journal, July 3, 1991).

"This week, the former Savannahian [Clarence Thomas] got the prized nomination to fill the vacancy created by Justice Thurgood Marshall's retirement. The president couldn't have made a finer choice.

"Judge Thomas has a long list of professional credentials in several branches of government that would serve him well on the high court. He worked as an assistant attorney general in Missouri for three years. He served as chairman of the Equal Employment Opportunity Commission during the Reagan and Bush administrations. He has served on the U.S. Circuit Court of Appeals in the District of Columbia since March of 1990, winning the respect of his colleagues."

"But the written resume of Clarence Thomas only tells half of the story. The otber half, as many people in Savannah already know and the rest of the country is finding out, is just as impressive, if not more so.

"'Only in America could this have been possible.' Judge Thomas said shortly after his nomination. It was a fitting remark for someone who was born in a house without plumbing in the Pinpoint community 43 years ago and knew what it was like to sit in the back of the bus and not be able to find a job at any Atlanta law firm after getting out of Yale Law School. Yet he had the courage, conviction and support not to let poverty or racism stand in the way of his dreams.

"Thus, those who question where Judge Thomas stands on civil rights actually come close to insulting him. He doesn't have to be told how important it is that every man be judged by the content of his character, not the color of his skin. He's lived it.

"President Bush is predicting that his nominee will win Senate confirmation. All things being equal, he should." (Savannah Morning News, July 5, 1991).

"The Constitution is vague about the Senate's role in dealing with presidential nominations to the Supreme Court. . . ."

"They [U.S. Senators] can and should examine his public record, including his judicial opinions and other writings."

"As they do so most will be pleased—but some undoubtedly will be disappointed—to find a jurist who loves America.

"I have felt the pain of racism, as much as anyone else,' he said a few years ago. 'Yet I

am wild about the Constitution and the Declaration [of Independence]. . . . I believe in the American proposition, the American dream, because I've seen it in my own life.'

"Such a man can't be insensitive or indifferent or recklessly ideological. Such a man could be a distinguished justice. (The Cincinnati Enquirer, July 7, 1991 ").

"There is every reason for American blacks to welcome the new diversity that the appearance of a black conservative intelligentsia represents. Not only does it afford a choice between political parties and the policies they endorse, but it opens a new horizon for opportunity. . . . If [black conservatism] starts spreading and blacks increasingly discover that the answer for poor people is not welfare, public housing, quotas and special treatment, the people who peddle, vote for and administer these programs will find themselves in very serious trouble. (Washington Times, July 10, 1991).

COMMENTS IN SUPPORT OF SUPREME COURT NOMINEE JUDOE THOMAS

"Thomas is a champion of what made America great and, if confirmed, he will seek to restore the source of that greatness he outlined in a 1987 speech: 'My household was strong, stable and conservative. . . . The most compassionats thing [our grandparents] did for us was to teach us to fend for ourselves and do that in an openly hostile environment." It will be amusing to watch the civil rights establishment try to oppose him on such a clearly all-American agenda. (Cal Thomas, St. Louis Post-Dispatch, July 5, 1991.)

"'We have a sense he is somebody we can be very comfortable with,' said William Rapfogel, director of the Institute for Public Affairs of the Union of Orthodox Jewish Congregations of America.

"Rapfogel said that Thomas displayed an 'incredible sensitivity to the Jewish people' while at the EEOC [Equal Employment Opportunity Commission]. In 1986, the organization presented him with its Humanitarian Award."

"Thomas has 'a very strong streak of independence, which has been honed by being very much an outsider within the black leadership group," said Murray Friedman of Philadelphia, Middle Atlantic states director of the AJ Committee.

"Friedman, who served as vice chalrman of the U.S. Civil Rights Commission from 1986 to 1989, said he has enormous respect for Thomas.

"'I have never seen a more towering Intelligence,' he said.

"Friedman said that while Marshall ably represented the black community in its fight for civil rights, the struggle today is for 'empowerment,' which calls for different kinds of strategies. He believes Thomas will be more suited for today's agenda." (Article by David Friedman, Jewish Exponent, July 5, 1991).

"Bush has accomplished something quite other than bringing to the Supreme Court someone who appears to be a promising jurist. He has done more in one day to remind the nation and above all to remind black Americans that it is incorrect to think of the black population as a monolith. Blacks tend to vote the way they do because the Democratic Party has prefected instruments of seduction that tend to attract, dealing as they do in victimology. . . . It is quite wrong to suppose that the situation is frozen, that blacks are immovable on the subject." (William F. Buckley, Jr., Boston Herald, July 6, 1991).

"How many other senators will want to be in the awkward position of opposing a man for not saying how he would rule on [abortion] or any other issue? How many will want to vote against a black nominee when they know the next nominee will be as conservative and as likely to oppose Roe versus Wade, but will not be black? * * * For the hapless national Democratic Party, Thomas' nomination represents more than a threat to civil rights, privacy rights—or abortion rights. . . . If Thomas is confirmed, he could be a magnet for the best and brightest blacks to consider turning Republican." (Thomas J. Brazaitis, Cleveland Plain Dealer, July 7, 1991).

"Mr. Bush has chosen well. Judge Thomas' record seems to promise that he will not seek to expand the discredited policies of dependence that serve only the civil rights leaders and congressional liberals. At the same time, his entire life refutes any suggestion that he is in any way insensitive to the condition of minorities. * * * The important consideration, for Congress and for the country, is the quality of the man, not his feelings on a single issue. And in Judge Thomas, Mr. Bush has obviously selected a man * * * qualified and prepared by a life of struggle to be a passionate defender of justice." (Durwood McAlister, Atlanta Constitution, July 7, 1991).

"The appointment of a black conservative * * * helps the American public understand that there is just as much diversity of political opinion within the black community as there is within the white community. If Judge Thomas makes it onto the court, he immediately becomes one of the most influential voices on fundamental issues facing our society. The mainstream press will have a hard time ignoring [his] views. His appointment and (hoped for) confirmation . . . could be a hopeful sign that we can begin pulling this society together again." (Tom Pauken, Dallas Times Herald, July 7, 1991).

"When Thomas stepped onto the national stage last Monday . . . cheers erupted at the EEOC (Equal Employment Opportunity Commission). * * * That longtime employees of the often beleaguered commission cheered Thomas' nomination * * * is a story in itself. * * * Clarence does not uncritically accept orthodoxy of any stripe. He questions cliches like 'color-blind society,' knows full well that color and race are facts of life, factors in life. * * * Thomas' confirmation hearings present a historic opportunity to reassure people of this country that the American dream lives." (R. Gaull Silberman, Los Angeles Times, July 7, 1991).

"Will Judge Thomas make a good Supreme Court justice? No one knows the future . . . but Thomas has done a good job every place he has been, and there is no reason to think that he will do less than his best on the Supreme Court. * * * If minority individuals can defy the minority establishment viewpoint, as Thomas has done, and still advance, this will be a crucial sign that blacks, for example, do not have to 'come by' [NAACP President] Ben Hooks and get his seal of approval." (Thomas Sowell, Detroit News, July 8, 1991).

"Those who are suggesting that there is a king of stereotypical black view of black interests to be met by a Supreme Court justice are, as usual, out of date and missing the point. The white world has been slow to grasp the scorn felt by able blacks like Thomas for hackneyed affirmative action formulas that assume special black disabilities, but which are as much based on demeaning stereotypes of black character and capacity as Jim Crow at its worst. * * * Thomas is entitled to be judged, of course, not on his race or views or experience but on the basis of his character, his temperament and his ability." (Edwin Yoder, St. Louis Post-Dispatch, July 8, 1991).

"For too long, debate in the United States has been dominated by self-appointed group spokesmen. Thomas' presence on the high court would open debate by focusing new attention on individuals who don't think like their group 'leaders' say they should, and then emboldening them to become part of the political process.

"The liberals should be apprehensive; with more issues returned to the American people to be decided through democratic means, and the political process opened up to debate from new and different voices, many liberals will find themselves without 'groups' to speak for." (Betsy Hart, The Evening Sun, July 12, 1991).

"Just as Justice Marshall was the man for his time, leading the essential charge for civil rights for black Americans in a nation where racial discrimination was official policy, so now Judge Thomas is the right man for this time, when official policies of racial preference—promoted in part by Justice Marshall—threaten the essential fabric of racial integration and harmony."

"Judge Thomas stands as living proof that in a colorblind society that the Rev. Dr. Martin Luther King preached, even the poorest black Americans can rise by the sheer quality and character of his life, out of a Savannah, Ga., sharecropper neighborhood to the highest court in the land. He has also vindicated Thurgood Marshall's original struggle for equality before the law. His appointment has breathtaking symbolic as well as substantial value. Just as Thurgood Marshall was a man for his time, Clarence Thomas appears to be heaven-sent for this one." (Warren Brooks, The Washington Times, July 12, 1991).

"The Clarence Thomas I know is a self-made man who has worked enormously hard to get where he is today. He will serve the Supreme Court well. * * * through his own strength of character, perseverance and strong belief in the American dream. I should know—I have known him for almost 20 years."

"While some in the civil rights movement contend that they are not convinced that Mr. Thomas is the right choice, I say he is. I think the main issues should be his ability to interpret the law fairly, follow it through and judge with compassion. There is no doubt that Clarence Thomas will be a fair and equitable Supreme Court justice.

"President Bush could not have made a more sound decision than to nominate Clarence Thomas for the next Supreme Court justice." (Alphonso Jackson, The Dallas Morning News, July 14, 1991).

"Praise of the praiseworthy can be problematic when the person praised is a Supreme Court nominee. Come September, Clarence Thomas should be confirmed.

"If Bush was right to nominate Thomas, it is right to defend the nomination forthrightly on the ground that Thomas believes this: Courts have been cavalierly rendering result-oriented decisions, basing conclusions on personal moral preferences rather than legal reasoning, short-circuiting democratic processes in order to achieve by judicial flat ends that are essentially political and properly achieved only by processes of persuasion." (George F. Will, Newsweek, July 15, 1991).

"The more one learns about Clarence Thomas, the more compelling he becomes as

a nominee to the Supreme Court—and as a fresh hope in breaking America's paralyzing deadlock over race. * * * Thomas believes that under natural law (and America's Declaration of Independence), all men and women are created equal, and that the U.S. Constitution provides legal guarantees. Government's role is to protect the rights of the individual but not to advance the interests of any group, black or whits; it is up to the individual to make it on his own." (David Gergen, U.S. News & World Report, July 15, 1991).

"The Clarence Thomas I know is a caring, decent, honest, bright, good-humored, modest and thoughtful father, husband and public servant who has already come farther in 43 years than most of us will in a lifetime."

"People throughout the agency [Equal Employment Opportunity Commission] sing Thomas's praises—his dedication, his professional standards, his extraordinary sensitivity to and support of the 'little people,' and his inspiration to employees at all levels." (Allen Moore, The Washington Post, July 16, 1991).

"At a Holy Cross alumni gathering on June 8, ths college's basketball coach, George Blaney, was chatting with a prominent alumnus, Connecticut Supreme Court Justice Angelo Santaniello, when U.S. Court of Appeals Judge Clarence Thomas walked into the room."

"We've known each other since he entered Yale Law School in 1971,' Santaniello said. 'At the time, Father John Brooks, the president of Holy Cross, asked me to look Clarence up and say hello. I did, and we've been friends ever since. At his [Thomas's] request, I swore him in as chairman of the Equal Employment Opportunity Commission in 1982.'

"'How would I describe him? He's a very warm person. Humble, personable, intense, straightforward with no airs. Clarence Thomas is a real fair guy. He shoudn't be stereotyped, because he won't walk a stereotyped line. Clarence calls it as he sees it, not as someone wants him to see it.'"

"Coach Blaney of Holy Cross commented the other day, 'Clarence is a very solid person, no fanfare, always up-front, always ready to help. We have a lot of Holy Cross friends in common. Clarence has all kinds of friends.'" (Bill Reel, Newsday, July 17, 1991).

JUDGE CLARENCE THOMAS: "THE REAL STORY"

(Remarks by Congressman Gary A. Franks (R–CT)

Initiatives of Judge Clarence Thomas at the U.S. Equal Employment Opportunity Commission (Tenure: May 1982 to March 1990):

"Overall, it seems clear that he left the [EEOC] in better condition than he found it." (*U.S. News and World Report*, July 15, 1991).

Enforcement:

CHARGE PROCESSING BEFORE THOMAS

In April 1981, the General Accounting Office found, "The rapid charge process has over-emphasized obtaining settlement agreements with the result that EEOC has obtained negotiated settlements for some charges on which GAO believes there was no reasonable cause to believe that the charges were true. The settlement agreements for these charges have little substance * * * and they distort the results of the rapid charge process by inflating the number of settlements."

The GAO report found that these negotiatsd settlements "undermine EEOC's credibility because . . . charging parties and employers said they were pressured into settlements they disagreed with [and] charging parties were led to believe that, since the charges were resolved with settlement agreements, their charges had merit but EEOC handled them ineffecively." (GAO, *Further Improvements Needed in EEOC Enforcement Activities, (April 9, 1981).*

THOMAS INITIATIVE

Under Judge Thomas' leadership in 1983, the Commission unanimously adopted a resolution to shift its presumption in favor of rapid charge processing to one of case-by-case decisions on appropriate methods for resolving administrative charges, so that adequate evidence could be obtained to ensure strong cases for conciliation and litigation. This resulted in more full investigations and ultimately, in more cases being considered by the Commission for litigation. (EEOC)

The Thomas Commission adopted a remedies policy which calls for a full remedy to be sought in every case where discrimination is found, including elimination of the discriminatory practices. (EEOC, *Policy Statement on Remedies and Relief for Individual Cases of Unlawful Discrimination*, Feb. 5, 1985).

LITIOATION BEFORE THOMAS

Cases were selectively litigated. (EEOC).

THOMAS INITIATIVE

An enforcement policy was adopted which called for every case of discrimination whioh fails oonciliation to be presented to the Commission for litigation oonsideration. (EEOC, *Statement of Enforcement Policy*, Sept. 11, 1984. This resulted in a dramatic increase in the number of lawsuits filed by EEOC. (EEOC Statistics).

SYSTEMIC CASES BEFORE THOMAS

Before Clarence Thomas arrived at EEOC, the agency had no viable systemic program. Many systemic charges were never investigated or resolved. (EEOC). In 1981, the Commission had only a handful of active pattern and practice cases. (EEOC Annual Report, 1981).

THOMAS INITIATIVE

In 1985, Judge Thomas reorganized the systemic function so that investigations and litigation of systemic cases were placed respectively into the two offices best equipped to conduct these specialized functions. (EEOC). In 1988, 103 systemic cases were investigated and 16 were in active litigation. Of the $131 million in relief obtained in FY 1988, over $48 million was awarded in large class action/pattern and practices cases. (Vice Chairman R. Gaull Silberman, EEOC).

LAWSUITS BEFORE THOMAS

In 1981, EEOC filed 444 lawsuits on behalf of discrimination victims. (EEOC Enforcement Statistics).

THOMAS INITIATIVE

By 1986, the agency was routinely filing more than 500 lawsuits each year. Altogether during Thomas tenure, EEOC filed more than 3,300 lawsuits and obtained nearly $1 billion in monetary benefits for victims of discrimination. (EEOC Enforcement Statistics).

Federal Sector Enforcement:

FEDERAL EEO APPEALS BEFORE THOMAS

EEOC's Office of Review and Appeals, which reviews federal agency decisions on employee EEO compliants, in 1982 was understaffed and ineffectively managed. Unassigned cases were placed in cardboard boxes stacked in a room from floor to ceiling; most were 2 or 3 years old before being assigned to an attorney, some were 6 to 8 years old before being completed. ORA decisions were not indexed or recorded for attorneys; GAO in 1982 reported that ORA decisions were inconsistent, even on separate appeals filed in the same case. (EEOC).

THOMAS INITIATIVE

EEOC under Clarence Thomas established a viable case filing system for federal appeals, assigned more attorneys to ORA, computerized oase indices and a tracking system, a library was established for the staff and the average case processing was reduced to 130 days by 1989. (EEOC). In 1982, ORA completed 3,488 cases. In 1988, it completed 6,380. (EEOC, *EEOC: 1982 to the Present*, Dec. 1988).

FEDERAL EEO BEFORE THOMAS

When Clarence Thomas arrived at EEOC, no "management directives" to federal agencies had been issued on the employment of minorities and women, no information or statistics existed on the status of minorities, women and disabled individuals employed by the federal government, mail was backlogged and paperwork was in boxes. (EEOC).

THOMAS RESPONSE

Under Thomas, Management Directives 707 and 707A, for minorities and women, were issued for 1982–1987; Management Directive 714 for minorities and women and 713 for persons with disabilities were issued for 1988–1992. Reports on the employment of minorities, women and disabled individuals were issued on an annual basis since 1982 and the agency became a model employer of persons with disabilities. By the end of Chairman Thomas' tenure, all mail was answered within 30 days and all filed were organized and computerized.

FINANCIAL MANAGEMENT BEFORE THOMAS

In May 1982, GAO reported to Congress that EEOC has not maintained acourate and up-to-date financial records, has not implemented adequate audit controls, had engaged in a questionable "loan" program to finance private Title VII discrimination suits and that the financial disarray of EEOC forced senior staff to make unsupported and improper manual adjustments to the year-end reports for fiscal years 1980–81. (GAO, *Continuing Financial Management Problems at the Equal Employment Opportunity Commission*, May 17, 1982). More than $1 million in outstanding employee travel debts remained uncollected and in fiscal year 1981, the agency underwent a reduction in force, which according to a former budget official was directly related to the agency having returned to the Department of Treasury unspent more than $10 million of its $140 million appropriation due to poor financial management. (EEOC Fact Sheet).

THOMAS INITIATIVE

As Chairman, Judge Thomas improved the agency's financial management. By the time he left EEOC, the agency was regularly obligating more than 99 percent of its appropriation and is able to monitor all funds in its various offices. In 1984, for the first time, EEOC's financial accounting systems met GAO standards. (EEOC Fact Sheet).

PERSONNEL BEFORE THOMAS

In 1982, the Office of Personnel Management described the EEOC work environment as "beset by acrimony," improper employee oonduct, poor performance and favoritism." (*The Washington Times*, July 5, 1991). In 1982, 60 jobs at EEOC were audited—53 were subsequently downgraded (of those, 42% were found to be overgraded by three or more grades); there was no accurate count of agency employees; employee pay records fre-

quently contained errors. (EEOC Fact Sheet).

THOMAS INITIATIVE

Chairman Thomas implemented employee training and recruitment programs to upgrade and train the existing work force and to recruit and attract high quality employees. For the first time in 1987, virtually all investigators received comprehensive investigative training. Equal Opportunity Specialist positions were converted to Investigators in 1988, reflecting EEOC's commitment to more full investigations. Federal sector Hearing Examiner positions were upgraded to Administrative Judges and given more authority. Incentive programs were implemented. (EEOC Fact Sheets).

Without additional resources, the personnel system was centralized and linked to the payroll system; by the end of Clarence Thomas' tenure the error rate was .01 percent. By the time Thomas left the agency, EEOC's personnel organization was routinely commended and consulted by other small agencies and the Office of Personnel Management for its excellent personnel practices.

In 1988, EEOC received the Office of Management and Budget's Productivity Improvement Award for quality, effectiveness and efficiency. (EEOC News Release, July 1, 1988).

After a July 1991 visit to EEOC, Senator John C. Danforth said, "While at the headquarters, I had the opportunity to speak with a wide variety of individuals. * * * The clear message of those I visited was that Clarence Thomas had transformed the EEOC from the dregs of the federal bureaucracy to an efficiently operating agency which was effectively performing the duties Congress had assigned to it." (Sen. John C. Danforth, July 16, 1991, Floor Statement).

COMPUTERIZATION BEFORE THOMAS

When Clarence Thomas arrived at EEOC, the only automated equipment for case management was two outdated mainframe computers with keypunch equipment. There were outmoded and incompatible word processors; the agency did not own even one personal computer. (EECO Fact Sheet).

THOMAS INITIATIVE

Under Judge Thomas' guidance, EEOC began to automate by purchasing its first personal computer in 1983. The agency was computerized without any additional funding from Congress. As a result of Thomas' initiatives, an integrated charge data system was installed in all 5 field office which connected to a national database containing nationwide enforcement data on more than a million cases by the end of Thomas' tenure, more than 1,000 compatible personal computers were installed throughout EEOC and virtually every program at EEOC was computerized, including financial management, personnel, and federal sector appeals, in addition to enforcement. (EEOC Fact Sheets).

[From the Washington Post, July 24, 1986]

EEOC TO RESUME HIRING-GOAL EFFORTS

(By Howard Kurtz)

The chairman of the Equal Employment Opportunity Commission said yesterday that because of this month's Supreme Court rulings upholding minority hiring goals for private employers who discriminate, the commission will resume efforts to impose such remedies.

The commission abandoned the use of hiring goals and timetables last fall at the behest of Chairman Clarence Thomas and two of the other five commissioners, who endorsed the Reagan administration's view that such targets amount to illegal quotas. But Thomas disarmed critics yesterday by announcing the policy shift at a Senate Labor and Human Resources Committee hearing on whether to reconfirm him for a second four-year term as chairman.

"The Supreme Court has ruled, and as far as I'm concerned that's that," Thomas said. "Whatever reservations I have are purely personal . . . That's the law of the land, whether I like it or not."

Thomas said the commission's enforcement attorneys will be told "that they are now to seek goals and timetables, and race- and sex-comscious remedies, permissible under the ruling of the Supreme Court." Pressed by Sen. Howard M. Metzenbaum (D-Ohio), Thomas said that "the EEOC will make a clear statement to our people that goals and timetables are one form of relief" available under employment discrimination laws.

The Washington Post reported in February that the EEOC had abandoned the use of goals and timetables without any vote or public announcement. Thomas said then that as a practical matter the commission was no longer approving litigation settlements involving hiring goals, and that he believed that such goals "denigrate an entire class of people."

The Supreme Court, in two rulings July 2, endorsed the use of affirnative action to remedy past employment discrimination and rejected the Reagan administration's argument that only specific victims of discrimination are entitled to such relief. One of the cases, involving a New York sheet-metal workers union that a federal judge had ordered to meet minority hiring targets, originally had been brought by the EEOC.

The commission later switched sides and joined the Justice Department in urging the Supreme Court to strike down the hiring goals.

The EEOC had made broad use of hiring goals since the early 1970s, and such targets became a standard practice during the Carter administration.

Thomas' remarks yesterday differed in tone from those made earlier by Justice Department officials, who interpreted the Supreme Court rulings narrowly and said the court had prescribed hiring goals as a possible remedy in only the most egregious cases of discrimination. The impact of the new EEOC policy will depend on how frequently the commission decides to seek such relief in its lawsuits against employers.

Thomas said it was important to monitor discrimination settlements and that he did not want to "just give someone goals and timetables that they can shove in a drawer. . . . Just to have goals and timetables every time there's discrimination, not even the Supreme Court said you could do that."

Thomas, a Yale Law School graduate and former aide to Sen. John C. Danforth (R.Mo.) who became EEOC chairman in 1982, calmly rebutted Democratic criticism yesterday and is likely to win reconfirmation. Thomas has said that his profile is so low that he is often confused with Clarence M. Pendleton Jr. the combative chairman of the U.S. Civil Rights Commission.

Thomas said he had "a thankless job" and has been subjected to "brutal criticism" for changing the direction of the EEOC. The Senate committee in May rejected the nomination of Thomas' chief of staff, Jeffrey I. Zucherman, to be the agency's general counsel.

Committee Chairman Orrin G. Hatch (R-Utah) said the agency had been a financial and administrative "disaster" before Thomas improved its management and increased its litigation caseload. "He has served without applause and without self-indulgent fanfare," Hatch said.

Ranking Democrat Edward M. Kennedy (Mass.) repeatedly pressed Thomas on his plans to change the commission's guidelines for dealing with conduct that has an "adverse impact" on minorities, Court rulings have held such conduct illegal regardless of whether an employer intended to discriminate.

Kennedy noted that Thomas told the Office of Management and Budget in June 1985 that he would propose new guidelines that "will recognize that statistical disparities are not tantamount to discrimination." Thomas said he has not descided on the proposed changes.

"You mean after we confirm you, then you'll go ahead and do it." Kennedy asked. "This is something extremely important. . . . Why can't you tell."

Thomas said he believes that statistics are only one way of measuring adverse impact on minorities.

[From the Washington Post April 20, 1984]

EQUAL WORTH

Ohio Rep. Mary Rose Oakar, in her April 7 response to William Raspberry's March 26 op-ed column "Who Decides 'Equal Worth?' number of pointe to which I feel compelled to respond.

Rep. Oakar states that the Equal Employment Opportunitiss Commission has a "tremendous backlog of sex discrimination charges that have just been sitting in its files for months."

This simply is not accurate. The commission receives approximately 10,000 wage discrimination charges annually. The backlog alluded to by Rep. Oakar consists of 266 charges, involving approximately 26 employers. These are being thoroughly reviewed, even though many involve public sector employers, an area where the EEOC has no litigation authority. A preliminary review indicates that the others include the issue of comparable worth—an issue over which the Commission's jurisdictional authority is far from clear.

The EEOC is well aware of the wage gap that exists between men and women in the labor force. The commission finds this reality as troublesome as Rep. Oakar does, and have vigorously challenged discriminatory practices that lead to inequitable compensation and perpetuate occupational segregtion. Allegations that the commission has abandoned or compromised its enforcement activities on behalf of female workers in the area of wage discrimination are ill founded.

Rep. Oakar's proposed legislation, H.R. 5092, would require the commission to spend enormous resources on, among other things, reporting on the 10,000 routine wage discrimination charges filed annually under Title VII and the Equal Pay Act, even though her legislation appears to address only the far fewer number of claims that are based on comparable worth. Ironically, the legislation would hinder, rather than facilitate, enforcement efforts by requiring members of the commission's compliance and litigation staff to be diverted from combating discrimination to compiling data. Clearly, the collection of unrelated data does little to achieve the goal we all seek: elimination of discriminatory pay differentials between men and women.

Perhaps Rep. Oakar's concerns might be better served by defining the issue she intends to address and proposing substantive

solutions. To date, the guidance provided by Congress and the courts as to the parameters of wage discrimination claims recognizable under existing legislation has been minimal and inconclusive. Until such guidance is developed, the commission will continue to enforce the law as it is written and to seek vehicles for clarifying the scope of the law.

THE EEOC IS THRIVING

Civil rights advocates have apparently given up on the Civil Rights Commission and disagree only on how little should be appropriated for the agency. Some groups have even suggested that the Treasury save the money and abolish the CRC altogether. This is probably due to the sharp philosophical disagreement between traditional civil rights lobbyists and those now leading the panel, most of whom have been appointed by President Reagan. Or it may simply reflect the fact that the commission, whose work was so vitally needed and so widely supported in the late '50s and early '60s, no longer seems to be fulfilling a function.

Another important executive agency charged with civil rights enforcement—the Office of Civil Rights in the Department of Education—has been hamstrung since 1984, when the Supreme Court sharply limited the scope of the law prohibiting discrimination by recipiente of federal funds. Because Congress has not yet acted to overturn that ruling by legislation, OCR—even if its leaders wers willing to act aggressively—has been unable to move against many kinds of discrimination that had been its responsibility before.

But things are markedly different at the Equal Employment Opportunity Commission, the federal agency created in Title VII of the Civil Rights Aot of 1964 and charged with rooting out employment discrimination. Hers, the caseload is expanding and budget requests are increasing. Under the quiet but persistent leadership of Chairman Clarence Thomas, the number of cases processed has gone from 50,935 in fiscal 1982 to 66,305 last year. In the same time period, legal actions filed went from 241 to 526. To handle this much larger caseload and higher litigation level, this year's budget request was a record $193,457,000. That's one-third more than was spent at the beginning of this administration and $28,457,000 over last year.

Domestic budget requests, even for meritorious programs such as this, are being cut with a vengeance, and the request for the EEOC is no exception. The House did vote a $13 million boost, and the commission has asked the Senate to restore the full amount requested. Whether that is possible, given other budget constraints, is uncertain. But legislators who care about civil rights enforcements have a special obligation to sustain an agency doing this work and enjoying, to an unusual degree in these times, the support and encouragement of the administration.

[From the Wall Street Journal, Oct. 12, 1987]

THE BLACK EXPERIENCE: RAGE AND REALITY

(By Clarence Thomas)

Through a series of 10 metaphorical tales or "chronicles," Harvard law professor Derrick Bell explores the theme of the subtitle of his book "And We Are Not Saved: The Elusive Quest for Racial Justice" (Basic, 288 pages, $19.95). The dialogue form—exchanges between character Bell and his fictitious heroine, Geneva Crenshaw, a black civil rights attorney and law professor—enables author Bell (who is black) to be provocative without appearing dogmatic.

We eavesdrop on conversations between committed black scholars who confidently and credibly express their qualms and quarrels about a future strategy for black Americans. In the fictional chronicles we behold a series of spectacles and mysteries: Ms. Crenshaw appears at the Constitutional Convention; the children of wealthy whites have their color and character transformed; a disease materializes that strikes only at single professional black women; pebbles are found to cure black criminality. These tales revolve around a variety of themes, including voting rights and proportional representation, the benefits and harms of school desegration, the limite of legal remedies, and "the social affliction of racism." Each conversation discusses or refers to underlying scholarship.

We are propelled by consuming rage, lifted up by transcendent hope and shattered by the return to the reality of the black condition today. At every turn, in Bell and Crenshaw's conversations, white racial and economic interests crush the hopes of blacks. Academic quotas become ceilings. Whites suppress black self-help. When black criminality ie cured by pebbles, whites no longer fear blacke but they quickly find other excuses to restrict black opportunity.

Through his characters, Mr. Bell succeeds in giving a grand tour of the most sophisticated left-wing black thinking on the law and race relations. More than that, he forces his readers, especially those who are not black, to become intimate with diverse strains of black thinking. Nonetheless, one leaves the book dissatisfied.

Much of the current thinking on civil rigbts has been crippled by the confusion between a "colorblind society" and a "colorblind Constitution." The Constitution, by protecting the rights of individuals, is colorblind. But a society cannot be colorblind, any more than men and women can escape their bodies. It would destroy limited government and liberal democracy to confuse the private, societal realm (including the body and skin color) and the public, political realm (including rights and laws). Obscuring the difference between public and private would allow private passions (including racial ones) to be given full vent in public life and overwhelm reason. When Founding Father James Madison spoke of the need for "the reason alone, of the public . . . to control and regulate the government," and for government to control and regulate the passions, he wanted exactly what Justice John Harlan was pointing to when he endorsed a colorblind Constitution.

Thus the "quest for racial justice," as opposed to justice per se, is doomed, because American justices by definition cannot be race- or group-oriented. Yet Mr. Bell's dialogues do bring home the struggle incumbent upon all races to use public reason to suppress racial passion. Keeping race out of public life in no way implies it will disappear from private or social life. But justice must focus on the rational defense of individual freedoms, including the property rights Mr. Bell is so contemptuous of. It is difficult to see how his characters ultimate faith that the Constitution can offer "salvation for all" ooulb be otherwise affirmed.

To be more explicit, black Americans must not fear to express their diversity as individual citizens and as members of society. The tragedy of the civil rights movement is that as blacks achieved the full exercise of their rights as citizens, government expanded, and blacks became an interest group in a coalition supporting expanded government.

Instead of reflecting the diversity of the black community, blacks political views have become more homogeneous. Yet, black ambitions need not be so closely weeded to ever-expanding government. Mr. Bell's laudable goal of "decolonizing black minds" would require an emancipation from reliance on government and overemphasis on race and class. In my mind, uniting black Americans means giving them the security to be diverse.

This book's greatest beneficiaries would be white conservatives, who could learn much from Mr. Bell's interlocutors about the effects of their negative civil rights rhetoric on the hopes and fears of blacks. Having heard blacks perceptions of America's contradiction, conservatives could then make an even more persuasive case for the protection of individual rights through a colorblind Constitution. With their rights so secured, black Americans could then confidently exercise their freedom to go their various paths.

[From the Chicago Tribune, Jan. 30, 1988]

WITHOUT DOUBT, A THOMAS OF MERIT

A special award honoring government officials who say the right thing in plain English should be created in the name of Clarence Thomas, chairman of the Equal Employment Opportunity Commission.

Describing his shock and consternation at having learned that commission underlings in several cities blew a deadline and allowed the statute of limitations to expire on 900 age discrimination cases, Mr. Thomas told a House committee:

"We are assessing the damage in each case. We will present a full report. No responsible person would miss the statute. We deserve harsh criticism for this occurrence. It will not happen again. We have warned people."

That was it: no cop-out. No excuses, no bellyaching about the other guy, no flabby claim that it's difficult—or impossible, as bureaucrats and elected officials increasingly bleat in sticky situations—to assess blame.

Everybody makes mistakes. Too few people in public life own up to them, much less pledge uncompromisingly that they will be corrected. Bless you, Mr. Thomas, for straight talk in an age of waffling.

THE CLARENCE THOMAS STORY: THE GOOD, THE BAD AND THE JUDGES

[President George Bush will soon send to the Senate Judiciary Committee his nomination of Clarence Thomas (presently chairman of the Equal Employment Opportunity Commission), to the U.S. Court of Appeals for the District of Columbia. Formal nomination has been delayed by slowness on the part of the American Bar Association's judicial rating process. If confirmed, Thomas would fill the seat vacated in 1988 by the resignation of Judge Robert H. Bork. The Thomas nomination has attracted initial opposition from some elements of the Civil Rights Establishment, including the Alliance for Justice (sse FLD report, 9/89).]

Clarence Thomas was born on June 23, 1948, in a small wood frame house outside of Savannah, Georgia. The house in which he was born, as well as the bed, was owned by Annie Crawford, his young mother's aunt. He was brought into this world by a midwife. His birth certificate reads simply that he was born in Pinpoint, Rural. His mother's name was Leola Thomas and is currently Leola Williams. His father's name is M.C. Thomas. The initials do not represent additional names. Clarence's father left while he was

still a toddler, and has lived in Philadelphia most of Clarence's life. Clarence would see him only once during his childhood, at the age of nine.

For the first six and a half years of his life he lived in Pinpoint with his mother, her aunt and uncle, together with his older sister and younger brother, Myers. They lived in the same wood frame house in which Clarence was born. The community of Pinpoint is one of many Black communities outside Savannah, Georgia. Although development threatens its existence today, in the late 40s and early 50s it was indeed rural. In Drums and Shadows—survival studies among the Georgia Negroes, Pinpoint is described as follows:

Pinpoint, a Negro community about nine miles southeast of Savannah is scattered over some twenty or thirty acres on a peninsula overlooking Shipyard Creek. Many of the small wooden cabins are neatly whitewashed and are half hidden by shrubbery and spreading oaks. Flowers and vegetables are planted in the most advantageous sunny spots near the houses and most yards are enclosed by picket fences, giving a cozy and pleasant privacy. The lawns, little more than wagon tracks, twist in and across the settlement. The informal and haphazard scattering of the houses, with high shrubbery bordering the lawns, gives an effect that is pleasing and unusual.

Pinpoint has a church, a pavilion on the tidewater creek, and a crab cannery. The men and women who do not work as domestic servants at the nearby country places find employment in the crab cannery or fish and crab and shrimp for themselves. The life is quite, soothed by the smell of salt marsh.

The people are, almost without exception, black or dark skinned, proud, upstanding and loyal, suspicious of strangers but generous and trusting friends. (cites omitted)

The house in which Clarsnce and his family lived was simple, but always neat and pleasant. For lighting, they used kerosene lamps, and there were also several electric ceiling lights. They had no indoor plumbing, and shared an outhouse with several neighbors. They carried water from a common pump usually in water buckets. As alluded to in Drums and Shadows . . . , everyone worked. Women did "day" work, cleaning houses for the whites who lived nearby. They also shucked oysters and picked crabs. Kids would often scrub crab barks to earn spending money. The men were usually day laborers and/or they raked oysters, fished or crabbed. They also steamed crabs, which the women then picked. Clarence's mother was among the best crab pickers. His sister, until recently, also picked crabs on a regular basis. As children, they played under the houses, or in the woods and marsh. They chased and caught fiddler crabs, and minnows, climbed trees, and played with makeshift toys.

Clarence started the first grade in September, 1954 at Haven Home School, which was segregated. Coincidentally, Brown v. Board of Education was decided that same year. About midway through the school year, Clarence's brother and their cousin, Little Richard, acoidentally burned their house down. As a result, Clarence and his brother moved to Savannah to live with their mother. They lived in one room of a tenement. There was a common kitchen. The kitchen floor consisted of old linoleum on the ground. There was an old gas stove that rarely worked and the old ice box in the upetairs hall rarely had ice in it. There was also a common toliet outside. The wooden structure had rotted, the toilet itself was always filthy and leaked sewage into the backyard. There was a small kerosene stove in the room for heat. Clarence usually slept on a loveseat while his brother slept in the bed with their mother. Their mother worked long hours as a maid, for $20.00 every two weeks. She left early in the morning and returned at the end of the day. Clarence completed the first grade at Florance Street School. He attended afternoon classes. He had poor attendance and often wandered the streets of Savannah.

In the summer of 1955, Clarence and his brother went to live with their maternal grandparents, Myers and Christine Anderson. Their grandparents had an ice delivery and fuel oil business. Their grandmother had a sixth grade education and their grandfather had gone to the third grade, although he made it very clear that in those three years he learned nothing since he was only allowed to attend school for a small fraction of the school year. He learned how to read and write a little after he became an adult.

Clarence's grandfather was a proud, disciplined man who believed that everyone who could work should work. He never knew his father, and his mother died when he was nine years old. He lived with his grandmother, who according to him was freed from slavery as a young girl. His grandmother died when he was twelve years old. He then went to live with his uncle, who was a hard man, with a family of about 16 children. Clarence's grandfather often told stories of how they had to hunt, fish, farm, and do "piece" work for nearby whites in order to survive. Myers Anderson's very hard life, without mother or father, no education, and in an era of segregation and Jim Crow laws, was a dominant influence on the way he raised his grandsons. They had to learn to work and to survive, no matter what happened in the world.

The world of Clarence's youth was the world of segregated Georgia. All of life was segregated, schools, libraries, movies, and lunch counters. There were separate water fountains and public restrooms for those who were "colored." Clarence recalls an incident when they were traveling from Savannah to the farm in Liberty County. As was customary, they stopped for gasoline. His grandfather asked whether his wife could use the restroom. The attendant said there was no "colored" restroom. Clarence's grandfather loudly and forcefully told the attendant that if his wife couldn't use their restroom, he couldn't use their gas. And, they sped off and stopped at a gas station with a "colored" restroom. This was the reality in which Myers and Christine Anderson were determined to raise two boys who could do for themselves.

Clarence and his brother worked with their grandfather on the oil truck or at whatever he was doing when there was no need to deliver oil. During the school months, they were required to be dressed and ready for work by 3 p.m. School ended at 2:30 p.m. There was always work to be done: in the yard, on old houses that their grandparenta owned, maintaining the trucks and car, painting, roofing, plumbing, etc. On Saturdays, if there was no oil to be delivered, the car had to be washed; the lawn, cut; the hedges, trimmed; the yard, cleaned; shoes, polished and so forth. To Clarence and his brother, there seemed to be no rest for the weary.

Clarence's grandfather believed that he could do just about anything. And when Clarence and his brother would eay they couldn't do something, he would chastise them not to use the word "can't" Old man can't is dead. I helped bury him," he would often say. For example, in the winter of 1957, he decided to build a house on the family farm land that had lain fallow for quite some time. When he said he would build something, he meant exactly that. He had previously build the house in which they lived in Savannah and several of the houses which he owned in the neighborhood. Clarence and his brother were required to work closely with him to build the house carrying cinder blocks, mixing cement, eto. In the spring of 1958, with the house completed, they began to farm. Each year they cleared more and more land to plant and cultivate. Thsy also raised chickens, pigs, and cows. They built garages, barns and a wire fence around a hundred acres or so. Initially, their grandfather plowed with a horse and mule, with Clarence and Myers following him. Later he bought an old Ford tractor. Then Clarence and Myers began to do quite a bit of plowing at the age of 13 or 14. They also used the tractor to haul logs and to cut and rake hay. Aside from plowing with a tractor, the rest of the farm work was done manually. They worked from "sun-up to sundown" with an hour to an hour and a half for lunch. The extended lunch breaks were necessitated by their grandfather's nap after lunch. Myers Anderson believed, to his grandsons' chagrin, that the sun should not catch anyone still in bed. Everyone should start work as soon as there were enough daylight to see.

Myers Anderson believed strongly in the maxim: early to bed, early to rise. He usually went to bed between 8 and 9 p.m. and rose between 2 and 4 a.m. If his grandsons occasionally were fortunate enough to sleep surreptitiously until 7 or 8 a.m., he would observe that they must have thought that they were rich. And, he would lecture them that a poor man could not afford to sleep that late.

Clarence's grandparents were honest, hard-working, and deeply religious people. They believed that hard work and decency were indispensable. For example, at no time could the grandsons refuse to do an errand for any neighbor. Adults were to be addressed in a respectful manner: yes ma'am, yes sir, Miss Gladys, Cousin Bee. At no time was a child permitted to debate an adult.

Hard, honest work was the constant lesson. Sometimes it seemed harsh. Clarence's grandfather repeatedly warned his grandsons that if they didn't work they didn't eat. And, on almost a daily basis he would rsmind them that his goal was to "raise them right", and teach them "to do for yourselves." To his grandparents' way of thinking, their grandsons had to be self-sufficient, especially in an environment in which the odds all seemed to be against them. The objective often seemed to be learning how to live, without coming into contact with or relying on a hostile, segregated world.

Myers Anderson was fiercely independent, and believed that his freedom depended on his ability to survive, without reliance on a hostile government and in an environment in which it seemed that Blacks only had privileges—not rights.

Christine Anderson was a quiet, saintly woman. She would often intercede with her husband, on behalf of their two grandsons. Her most constant instruction to her grandsons was "say your prayers." And, each morning she greeted them with their lunch, hot breakfast; and gospel music from the radio station. She, too, worked constantly.

Clarence's grandparents enrolled him and his brother in St. Benedict's Grammar School, a segregated Catholic school. Al-

though the physical plant was old, the education was rigorous.

Franciscan nuns taught them. Education was the number one priority. No excuses. Myers and his brother were informed and reminded, as required, that in any disagreement with teachers, they were always wrong and the teacbers were always right. Clarence and his brother missed one-half day from school during the entire time they lived with their grandparents. Education was seen as the key to a better way of life. Clarence's grandfather felt that Catholic schools were better because there was corporal punishment, discipline, and uniforms. He didn't see how a child could be taught without these.

Clarence, his brother and their grandfather were members of St. Benedict's Catholic Church, where the two boys were altar boys. (Their grandmother attended a Baptist Church.) At St. Benedict's Grammar School, the nuns stressed the inherent equality of all people, and pushed the students to excel. At homs, at school, and at Church, Clarence was constantly pushed and encouraged to perform and achieve—no matter what the odds were.

From 1962-64, Clarence attended St. Pius X High School for the 9th and 10th grades. St. Pius X was also segregated and also taught by the Franciscan nuns. In 1964, Clarence transferred to St. John Vianney Minor Seminary near Savannah. He repeated the 10th grade in order to take three years of Latin. He finished his high school education tbere in 1967. At St. John's, he was the only black student in his class. There was one other black student in the freshman olass during Clarsnce's first year, however, he did not return for his sophomore year. Attending St. John's was Clarence's first regular contact with whites, other than nuns. At St. John's, Clarence redoubled hie efforts to achieve. And, he did very well, One indication of what his classmates thought of his efforts can be gleaned from a statement which they placed under his yearbook picture: "Blew that exam, only got a 98."

From 1967-68, his freshman year in college, Clarence attended Immaculate Conception Seminary in Conception Junotion, Missouri. He transferred to Holy Cross College in Worcester, Massachusetts for his sophomore year and graduated with honors in 1971. There, he helped found the Black Students Union, where he served as an officer for three years. He worked in the Free Breakfast Program and tutored in the Worcester community. Clarence was an excellent student who was considered by many to be a "grind". His college education was financed by a combination of scholarships, loans and work study. However, there always seemed to he well-intentioned persons who helped when times were most difficult. One such person was an anonymous donor of $300 to finance a speed reading course for Clarence.

From 1971-74, Clarence attended Yale Law School with the intent of returning to Savannah. He worked for New Haven Legal Assistance during law school and summers of 1971 and 1972. He worked for a small integrated firm in Savannah in the summer of 1973, financed, in part, by a grant from the Law Students Civil Rights Research Council.

During his third year in law school, Clarence decided not to return to Savannah as he had originally planned. Since he was married, had a child, and student loans, he reluctantly interviewed with law firms. In the process, he once again confronted an old nemesis, racial discrimination. Though he had done well in law school, he was interrogated about his performance in college, high school and even grammar school. The interview process tended to be insulting and condescending. The obvious assumption was that Clarence was not as good as his white classmates, even if his law school grades were higher.

Ultimately, John C. Danforth, then Attorney General of Missouri, offered Clarence a job in his office. Clarence was first impressed by Danforth's sincerity and honesty. He first admitted to Clarence that he did not know how it was to be Black and poor since he was neither. Then he promised Clarence that he would treat him the same as everyone in the office.

Clarence sat for the Missouri bar in the summer of 1974. That summer would be most memorable not for the bar examination but for his two-month stay at the house of Margaret Bush-Wilson, who would later become Chairman of the Board of the NAACP. She allowed Clarence to live at her house, since he had no money and knew no one in Missouri. Her generosity, advice and counsel have influenced and remained with Clarence over the years.

In August of 1974, Clarence and his family moved to Jefferson City, Missouri. The job in the Attorney General's office turned out to be everything that it had been billed to be. The work was endless, the staff was small, and there was no bureaucracy in the office. It was perfect for a young attorney. Three days after being sworn in as a member of the Missouri bar, Clarence argued his first case before the Supreme Court of Missouri. Over the next 2½ years, he would represent the state in many cases before the trial courts, appellate courts, and Supreme Court of Missouri, in matters ranging from criminal law to taxation.

In 1977, Clarence left the Attorney General's Office and went to work in the law department of Monsanto Company, where he worked on general corporate legal matters such as antitrust, contracts and governmental regulations.

He rejoined now Senator Danforth in August of 1979 as a legislative assistant. During his 1½ years on Capitol Hill, Clarence was responsible for issues involving energy, environment, federal lands and public works.

He was nominated in the spring of 1981 by President Reagan as the Assistant Secretary for Civil Rights in the U.S. Department of Education. In the spring of 1982, he was nominated by President Reagan to become Chairman of the Equal Employment Opportunity Commission. He was sworn in on May 17, 1982. He was renominated and reconfirmed in 1986. Having been Chairman of EEOC for mors than seven years, he has served longer in that position than any of his seven predecessors.

Clarence's first marriage ended in divorce. He has one son, Jamal, by that marriage, and has had custody of Jamal since 1983. For most of his tenure at EEOC he has been a single parent. Jamal is now 16 years old and a junior in high school.

Clarence remarried in May of 1987. His bride is the former Virginia Bees Lamp. Mrs. Thomas is a Senior Legislative Officer at the U.S. Department of Labor. Clarence, Virginia, and Jamal reside in northern Virginia.

[From the New York Times, July 2, 1991]

FROM POVERTY TO U.S. BENCH—CLARENCE THOMAS

(By Neil A. Lewis)

WASHINGTON.—Judge Clarence Thomas, President Bush's ohoice to succeed Thurgood Marshall on the Supreme Court, has always been quick to tell his friends and colleagues about the grinding poverty into which he was born in coastal Georgia.

His father abandoned the family to go north when Judge Thomas was 7 years old, and his harried mother sent him to live with his grandparents in Savannah, the first time he lived in a house with a toilet. His success, he has told friends, was due to his grandfather's insistence that he go to school and work hard.

It was the sense that he had earned everything, and that nothing was given him because of his race, that has made him an impassioned opponent of affirmative action. "I was raised to survive under the totalitarianism of segregation, not only without the active assistance of government but with its active opposition," he once said in a speech entitled, "Why Black Americans Should Look to Conservative Policies."

He has attacked with relish quotas, timetables and nearly all varieties of racial preference as having the insidious effect of enforcing a notion that blacks cannot compete with whites on an equal footing. Although his personal outlook on that issue probably extends into his judicial philosophy he has not yet had the chance to express it as a judge.

DIFFERENT VIEW OF THE MEANS

"He made it strictly on the merits, and he resents the notion that he's ever gotten anywhere because he's black," said Lovida H. Coleman Jr., a Washington lawyer and friend of Judge Thomas's from the days when they both attended Yale Law School. She said his views of the goals of civil rights are the same as most black Americans. "It's juet that he has a different view of the means to those ends," she said.

It was his opposition to preference programs for members of minority groups, friends say, that first brought him into the orbit of a small group of black conservatives who delighted in questioning the views of the traditional civil rights groups. Eventually he came to the attention of the Reagan Administration.

Principally because of his solid legal background and his views as a black opponent of affirmative action he has long been regarded as a hot prospect for the Republican Party, which he joined shortly after Ronald Reagan was elected President.

Clarence Thomas, 43 yeare old, was born in Savannah, then moved to the small segregated town of Pinpoint, Ga., where, he has recalled, everyone lived in rickety shacks.

DISCRIMINATION AT SEMINARIES

His grandfather, Myers Anderson, could not read hut saw to it that Clarence went to a Catholic school that a group of white nuns had established for poor hlack children. His grandfather made him stand up at meetings of the local chapter of the National Association for the Advancement of Colored People and read his grades aloud.

He enrolled at the all-white St. John Vianney Minor Seminary in Savannah. He once told an interviewer that the bigotry among some of the seminary students dismayed him but the was shocked that everyone tolerated it. Still, he thought about becoming a priest and enrolled for a time at another seminary, Immaculate Conception, in Conception, Mo., but decided against a religious career after encountering more discrimination.

Judge Thomas expressed frustration at such discrimination later in life when he told Juan Williams in an interview for The Atlantic magazine: "There is nothing you can do to get past black skin. I don't care how edu-

cated you are, how good you are at what you do. You'll never have the same contacts or opportunities."

He graduated from Holy Cross College and Yale Law School. About that time his first marriage, from which he has one son, began to come apart. He has since married Virginia Lamp, who works on legislation for the United States Labor Department, and lives in Alexandria, Va.

PROTÉGÉ OF DANFORTH

One of Mr. Thomas's first jobs was as an assistant attorney general to John Danforth, then the Missouri Attorney General and now the state's senior Senator. Like many successful people, Clarence Thomas flourished as a protégé.

He has often said he was deeply grateful to Mr. Danforth because he felt he paid no attention to his race.

In his assignments as an assistant attorney general, he assiduously avoided working on anything to do with race. He worked on tax and environment cases. He left government briefly, and with a recommendation from Mr. Danforth, he went to work for the Monsanto Chemical Corporation as an in-house counsel. Friends say it was typical of him that he wanted to take a peek at the corporate world.

When Mr. Danforth went to Washington, Mr. Thomas came as a legislative assistant, working again on non-civil-rights issues.

CRITICAL OF CIVIL RIGHTS LEADERS

The Reagan Administration then tapped him to be the assistant secretary for civil rights at the recently formed Department of Education. In May 1982 he became the chairman of the Equal Employment Opportunity Commission, the agency charged with enforcing Federal laws against discrimination based on race, gender, color, national origin and, eventually, age.

During this period, he became an ever more forceful spokesman against the traditional civil rights approach. Friends said that he often feuded privately with senior officials in the Justice Department over race issues. Yet in a 1984 interview with The Washington Post, he complained that all the nation's traditional civil rights leaders do is, "bitch, bitch, bitch, moan and whine."

In an article for the Howard Law Journal and in speeches and interviews he also criticized some aspects of the Supreme Court's landmark 1954 ruling ordering school desegregation, Brown v. Board of Education. He said the ruling was based too much on sentiment and that it suggested that black schools were automatically inferior to white schools. The ruling, revered by many blacks, came in a case brought by Thurgood Marshall, the man whose seat Judge Thomas would replace.

When Mr. Thomas was named to the Court of Appeals for the District of Columbia, which is widely viewed as the nation's second-most influential court, opponents and supporters saw him as a likely Supreme Court appointment if Justice Marshall retired. His nomination caused muted anxiety among traditional civil rights groups and leadere who, in the end, lent a quiet but unenthusiastic support.

FEW CONTROVERSIAL CASES

In his 15 months on the appellate court, he has not had a chance to rule on any affirmative action cases, nor on most of the other issues that are at the center of the nation's social agenda like abortion, obscenity and the proper dividing line between church and state.

Most of the cases in the capital circuit involves direct appeals from Federal regulator agencies, and Judge Thomas's opinions on the bench include many administrative law rulings that generally upheld the agency.

In criminal rulings, Judge Thomas has joined with conservatives and liberals.

A regular cigar smoker, Judge Thomas reads briefs in a small smoking room off his main office. He has recently adopted an exercise regimen in the court's basement gym.

When the Senate Judiciary Committee held hearings on his nomination to the appeals court in 1990, it was his tenure at the employment commission that produced the most criticism.

Senator Howard M. Metzenbaum, an Ohio Democrat, voted against confirmation, saying that Mr. Thomas refused to enforce a recent law against age discrimination. He said that Mr. Thomas allowed 1,700 complaints filed with state anti-discrimination agencies to lapse without investigation, a charge Mr. Thomas denied.

CHANGING FOCUS OF COMMISSION

But it was Mr. Thomas's general stewardship of the agency that was behind much of the complaints by his opponents. Instead of the large-scale class-action suits the agency had brought in the past, he scaled down its mission, focusing on individual complaints.

It was during those hearings, under friendly questioning from Republican committee members, that Mr. Thomas spoke of how he felt about being outside the mainstream of blacks in public life.

"I have taken positions which are at odds with what I have perceived in the past as expected orthodoxy and you can say orthodoxy or stereotype for black Americans," he said at one point. "I have problems with that."

He said that his grandfather, in his last conversation with him before his death in 1988, told him to choose between principle and popularity. That's what he felt he was doing, Mr. Thomas said.

CLARENCE THOMAS

Born: June 23, 1948.

Hometown: Savannah, Ga.

Education: A.B., Holy Cross College, J.D., Yale Law School.

Career Highlights: Assistant Attorney General of Missouri, 1974–77; lawyer, Monsanto Co., 1977–79; legislative assistant to Sen. John C. Danforth of Missouri, 1979–81; Assistant Secretary for Civil Rights, Department of Education, 1981–82; Chairman, Equal Employment Opportunity Commission, 1982–1989; judge, United States Court of Appeals for the District of Columbia Circuit, 1989 to present.

Hobbies: Lifting weights; reading; watching basketball.

[From the Washington Post, July 2, 1991]

I EMPHASIZE BLACK SELF-HELP: THOMAS' THOUGHTS ON QUOTAS, THE WORK ETHIC AND CONSERVATISM

Wall Street Journal, 1987: "I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless this constitutional principle is first established. Hence, I emphasize black self-help, as opposed to racial quotas and other race-conscious legal devices that only further and deepen the original problem."

The Washington Post, 1983: "You can't replicate my grandfather. A sociologist at the University of Alahama, when he studied blacks who were successful, found that there was a strong father figure, a strong person someplace in that individual's life, that broke him out of the circle of poverty—a coach, a minister, grandparent, mother, father. Somebody who said, 'Boy, you are going to school today. You gon' be somebody. You gon' do better'n I'm doin'.' That was my grandaddy's whole philosophy. 'I'm doin' this for y'all, so y'all don't have to work for the white man, so y'all don't have to take what I had to take.' My granddaddy used to say this world is tough, always tough on a poor man. My granddaddy told me, when I went off to college, 'Just remember that no matter how many degrees you get and how high you go, the lowest white man in the gutter can call you a nigger.' The attitude that kept me going came from him. He used to always say that there was no problem that elbow grease can't solve. Then he'd say things like, 'Old man Can't is dead. I helped bury him.'"

From a speech to the Heritage Foundation, 1987: "My household . . . was strong, stable and conservative. In fact, it was far more conservative than many who fashion themselves conservative today. God was central. School, discipline, hard work and 'right-from-wrong' were of the highest priority. Crime, welfare, slothfulness and alcohol were enemies. . . . The most compassionate thing they (our grandparents) did for us was to teach us to fend for ourselves and do that in an openly hostile environment. . . . Those who attempt to capture the daily counseling, oversight, common sense, and vision of my grandparents in a governmental program are engaging in sheer folly. Government cannot develop individual responsibility, but it certainly can refrain from preventing or hindering the development of this responsibility.

". . . I joined the [Reagan] administration [in 1981] as an assistant secretary in the Department of Education. I had, initially, resisted and declined taking the position of assistant secretary for civil rights simply because my career was not in civil rights and I had no intention of moving into this area. In fact, I was insulted by the initial contact about this position as well as my current position. . . . I always found it curious that even though my background was in energy, taxation and general corporate regulatory matters, that I was not seriously sought after to move into one of those areas.

". . . I am of the view that black Americans will move inexorably and naturally toward conservatism when we stop discouraging them; when they are treated as a diverse group with differing interests; and when conservatives stand up for what they believe in rather than stand against blacks. This is not a prescription for success, but rather an assertion that black Americans know what they want, and it is not timidity and condescension.

". . . I failed to realize just how deep-seated, the animosity of blacks toward black conservatives was. The dual labels of black Republicans and black conservatives drew rave reviews. Unfortunately, the raving was at us, not for us. The reaction was negative, to be euphemistic, and generally hostile. Interestingly enough, however, our ideas themselves received very positive reactions, especially among the average working class and middle-class black American who had no vested or proprietary interest in the social policies which have dominated the political scene over the past 20 years.

". . . Inherent equality is the basis for aggressive enforcement of civil rights laws and equal employment opportunity laws designed to protect individual rights. Indeed, defending the individual under these laws should be the hallmark of conservatism rather than its Achilles' heel. And, in no way, should this be the issue of those who are an-

tagonistic to individual rights and the proponents of a bigger, more intrusive government. Indeed, conservatives should be as adament about freedom here at home as we are about freedom abroad. We should be at least as incensed about the totalitarianism of drug traffickers and criminals in poor neighborhoods as we are about totalitarianism in Eastern Bloc countries. The primacy of individual rights demands that conservatives be the first to protect them."

Atlantic Magazine, 1987: "There is nothing you can do to get past black skin. I don't care how educated you are, how good you are at what you do—you'll never have the same contacts or opportunities, you'll never be seen as equal to whites.

". . . Those who insist on arguing that the principle of equal opportunity, the cornerstone of civil rights, means preferences fer certain groups, have relinquished their roles as moral and ethical leaders in this area. I bristle at the thought, for example, that it is morally proper to protest against minority racial preferences in South Africa while arguing for such preferences here."

[From the Wall Street Journal, July 2, 1991]

JUSTICE THOMAS

"Judge Thomas' life is a model for all Americans," President Bush said yesterday as he honored both the highest ideals of civil rights and the great principles of the emerging conservative jurisprudence. Clarence Thomas's record of achievement and his well-developed judicial philosophy make him more than qualified to join the Supreme Court. The combination of who he is and what he believes could make his nomination President Bush's most important domestic-policy accomplishment.

Judge Thomas' remarkable career began when he overcame the hurdles of a life that started in the poverty of segregated rural Georgia. His independence was clear when he graduated from Yale Law School intending to become a tax attorney, but refused to join the prestigious law firms that viewed him primarily as a black, not as a gifted legal mind. (As Dinesh D'Souza writes nearby, he instead went to work in government for John Danforth. One irony is that Judge Thomas's refusal to become a law-firm token means the American Bar Association may mark him down for failing to practice law long enough.)

Ralph Neas and People for the American Way claim to doubt Judge Thomas' commitment to racial equality. None of this will surprise Judge Thomas. He also endured sniping from the pro-quota lobbyists during his eight years as head of the Equal Employment Opportunity Commission. His yeare in the hothouse of political Washington will serve him well during the nomination process and later in adjudicating the political issues that inevitably come to the Supreme Court.

We would like to put everyone on notice that those who say Judge Thomas was nominated to fill a racial quota run the risk of being labeled racists. Oppositon to quotas does not mean that race is a wholly irrelevant consideration. As Mr. Thomas wrote in the Journal in 1987, "The Constitution, hy protecting the rights of individuals, is color blind. But a society cannot be colorblind, any more than men and women can escape their bodies." We would strongly oppose a law that mandates that one of the nine Supreme Court seats must be held by a black, but it is also desirable that a President nominate a black who is so clearly qualified for the job.

This is especially true here and now. Just as Thurgood Marshall symbolized the generation that overcame Jim Crow, Justice Thomas would serve as a beacon for a troubled generation of minorities who deserve reminders of the importance of strong families and education. "In my view, only in America could this have been possible," Judge Thomas said yesterday in accepting the nomination to the post where he said he hoped to "be an example to those who are where I was, and to show them that indeed, there is hope."

Judge Thomas is another role model as well. Many talented minorities and women have experienced the double-edged sword of affirmative action. Judge Thomas signaled at yesterday's press conference that he can be stoic in the face of taunts by those who refuse to believe that his accomplishments are his own.

Unlike David Souter, this nominee has a long and distinguished paper trail. From his writings and actions, we have no doubt that Justice Thomas would join Antonin Scalia on the scholarly and sometimes libertarian wing of the conservative court. We would not be surprised if he gives the court a greater understanding of economic liberties as one of the Founding Fathers' more important civil rights.

Judge Thomas has made very clear that he is of the judicial-restraint school that abhors legislating from the benoh. He has written serveral important decisions, but we are especially impressed with his May 10 opinion in *Cross-Sound Ferry Services v. Interstate Commerce Commission*.

In it, he addressed the key question of standing—that is, when does a case raise the kind of controvery that courts are supposed to decide. "When federal jurisdiction does not exist, federal judges have no authority to exercise it, even if everyone—judges, parties, members of the public—wants the dispute resolved," Judge Thomas wrote. "The truistic constraint on the federal judicial power, then, is this: A federal court may not decide cases when it cannot decide cases, and must determine whether it can, before it may." Judicial restraint has rarely been so pithily expressed.

Judge Thomas is precisely the kind of jurist President Bush assured votere he would select. He would take the Constitution seriously and apply the laws equally. We eagerly await the beginning of many years of service by Justice Clarence Thomas.

[From the New York Times, July 2, 1991]

CLARENCE THOMAS IN HIS OWN WORDS

ON AFFIRMATIVE ACTION

I firmly insist that the Constitution be interpreted in a colorblind fashion. It is futile to talk of a colorblind society unless this constitutional principle is firet established. Hence, I emphasize black self-help, as opposed to racial quotas and other race-conscious legal devices that only further and deepen the original problem. (From a Letter to the Editor of The Wall Street Journal, Feb. 20, 1987.)

SURVIVING RACISM

Of course, I thought my grandparents were too rigid and their expectations were too high. I also thought they were mean at times. But one of their often-stated goals was to raise us so that we could "do for ourselves," so that we could stand on our "own two feet." This was not their societal policy, it was their family policy—for their family, not those nameless families that politicians love to whine about.

The most compassionate thing they did for us was to teach us to fend for ourselves and to do that in an openly hostile environment. In fact, the hostility made learning the lesson that much more urgent. It made the difference between freedom and incarceration: life and death: alcoholism and sobriety. The evidence of those who failed abounded, and casualties lay everywhere. But there were also many examples of success—all of whom, according to my grandfather, followed the straight and narrow path.

I was raised to survive under the totalitarianism of segregation, not only without the active assistance of government but with its active opposition. We were raised to survive in spite of the dark oppressive cloud of governmentally sanctioned bigotry. Self-sufficiency and spiritual and emotional security were our tools to carve out and secure freedom. Those who attempt to capture the daily counseling, oversight, common sense, and vision of my grandparents in a governmental program are engaging in sheer folly. (From "Why Black Americans Should Look to Conservative Policies," The Heritage Lectures, No. 119.)

ON AFRICAN-AMERICANS

Blacks are no less pluralistic than the rest of society. Just as no one really speaks for white America, no one really speaks for black America. . . . The argument that the views of the black leadership are consonant with those of black Americans misses the point, since most blacks are not represented by black politicians. Nor are most blacks members of organizations that claim to represent them. . . . The real issue here, however, is not who represents black America. . . . Rather, the real issue is why, unlike other individuals in this country, black individuals are not entitled to have and express points of view that differ from the collective hodgepodge of ideas that we supposedly share because we are members of the same race.

There seems to be an obsession with painting blacks as an unthinking group of automatons, with a common set of views, opinions and ideas. Anyone who dares suggest that this may not be the case or has a viewpoint that disagrees with the "black viewpoint" is immediately cast as attacking the black leadership or as some kind of anti-black renegade. . . . Many of us accept the ostracism and public mockery in order to have our own ideas, which are not intended to coincide with anyone else's, although they may well do just that. The popularity of our views is unimportant, hence, polls and referendums are not needed to sustain or ratify them. . . . We certainly cannot claim to have progressed much in this country as long as it is insisted that our intellects are controlled entirely by our pigmentation, with its countless variations, even though our individual experiences are entirely different. (From an Op-Ed piece in The Los Angeles Times, Nov. 15, 1985.)

[From the Washington Times, July 2, 1991]

"HE LOVED HIS BOOKS," JURIST'S FAMILY SAYS

SAVANNAH, GA.—Clarence Thomas was a studious youth who worked hard for the honor he achieved yesterday when President Bush nominated him to the U.S. Supreme Court, his joyous family and friends said.

"Any time you wanted to find him, you would have to go to the library," said his mother, Leola Williams of Savannah. "If you wanted him to do something, you'd just go to the Carnegie Library, and there he was. He loved his books."

Mrs. Williams was 18 when Clarence, her second child, was born in a house without plumbing in Pinpoint, Ga., a tiny community south of Savannah.

"Where we came from, we didn't have nothing. When he was born, I didn't have anything. We just lived day by day. I picked crabs for a living to take care of him, and then my father and my mother stepped in to help us. I just wish they were here today," she said.

Judge Thomas' sister, Emma Mae Martin, 44, said she had expected her brother to be chosen for the high court.

"I think he earned it. He worked very hard for it. And he believes in the Lord," she said in a telephone interview.

State Sen. Roy Allen, who practices law in Savannah and Atlanta, said he and Mr. Thomas were schoolmates at an all-black Catholic grade school, St. Benedict's, and served as altar boys together.

"I can't tell you how happy I am for him. . . . Anything good that comes to Clarance, he deserves it all," said Mr. Allen. "He'll do an excellent job. He is consistent, determined and he's just a good guy."

Mr. Allen, a Democrat, said he isn't bothered by Judge Thomas' conservative Republican background.

"You have to understand Clarence's upbringing," he said. "His family were strong, devout Catholics. I would guess you may want to call it conservative. But to me, he represents the dream that African-Americans want to achieve. I don't know if you can dissect that into labels—conservative, liberal or whatever. He's a guy who has principles."

[From the Washington Post, July 2, 1991]

JUDGE THOMAS' NOMINATION

Judge Clarence Thomas, who was nominated yesterday by President Bush to fill a vacancy on the Superme Court, has been a well-known and sometimes controversial figure in the government for more than a decade. But even those who have disagreed with him on policy grounds will concede that his life, which began in extreme poverty, has been one of accomplishment, If confirmed, he would bring to the court a range of experience not sharsd by any other sitting justice.

Conservative black Republicans are a rare breed, and Judge Thomas's performance in high-visibility civil rights jobs in the Reagan and Bush administrations was watched carefully. His actions in these positions will surely be the focus of the Senate Judiciary Committee's inquiry, which will begin soon.

The terrain is not unfamiliar, however, Only 18 months ago he went before the same panel to be confirmed in his present position on the U.S. Court of Appeals for the D.C. Circuit. Sen. Howard Metzenbaum initiated a thorough investigation, listened to every group and individual with a grievance, sifted through thousands of documents and was nevertheless able to persuade only one other Senator to vote with him against the nomination. This time the stakes are higher and the questioning will go beyond his record in the government to his broader judicial philosophy. Groups that chose to sit out the last confirmation battle will surely bs involved this time.

Judge Thomas is the first person nominated to the Supreme Court who was born after World War II. He is only the second black named to that position. But it is his personal background that would bring the most important element of diversity to the court. Justice Thurgood Marshall, the only black to have served on the Supreme Court, certainly knew discrimination and adversity, but he was the product of a stable, working-class family living in Baltimore. Judge Thomas was raised in rigidly segregated Georgia by grandparents who he says were functionally illiterate. Nevertheless, they managed to provide him an education, a disciplined and loving home and the encouragement necessary to convince him that he could succeed.

He said yesterday that he wanted to be "an example to those who are where I was." On the court, he could be more. He could add, if he chose to, a welcome and much needed sensitivity on issues of race and poverty.

[From the Dallas Morning News, July 2, 1991]

STRONG CHOICE: JUDGE THOMAS IS A MAN OF INTEGRITY, ABILITY

It is said that the finest steel is tempered in the hottest fires. If true Judge Clarence Thomas, President Bush's nominee for the U.S. Supreme Court, is a man of fine steel. A child of poverty reared by grandparents, in a tenement lacking indoor plumbing, Judge Thomas through strength of character and with the devoted help of his grandparents has constructed for himself an exemplary life, a life that raises a standard to which future generations of Americans may repair.

Like the man he has been chosen to succeed, Justice Thurgood Marshall, Judge Thomas is black. Like Justice Marshall, he rose through great personal effort and in the face of obstacles that would have thwarted lesser men. Unlike Justice Marshall, Judge Thomas has developed a view of life and law that places greater emphasis on individual effort, individual responsibility and the sanctity of law above race. These beliefs have led him to oppose quotas and other affirmative action tools that grew out of the civil rights movement of the 1960s.

There will be an attempt by liberals who believe that individuals are victims of society's failings and that special legal redress is essential to overcome discrimination to cast him as an "Uncle Tom" who has adopted his conservative views from expediency, not conviction. No less an authority than Alphonso Jackson, director of the Dallas Housing Authority, asserts any such allegations would be pure bunk.

Capable, competent and compassionate are the words, Mr. Jackson, a man who chooses his words with care, uses to describe his friend of 20 years, Judge Thomas. "Judge Thomas is a man who believes at the deepest level justice must be colorblind," asserts Mr. Jackson. "He believes African-Americans should use their economic power to do for themselves rather than ask for something they feel they are owed."

While some might take issue with that philosophy any detractors will find it difficult to take issue with Judge Thomas' legal abilities, his mental strength, his character or his judicial temperament.

It will be hard indeed for even those senatore who most vigorously disagree with Judge Thomas' voluminous written record to fault a man who could climb from such abject poverty through a then all-white seminary school through Holy Cross (on scholarships) and finally through Yale Law School. It will be hard for a Senate Judiciary Committee that voted 21 to 1 to confirm Judge Thomas for the 1st U.S. Circuit Court of Appeals to now find issues with which to reject him for the high court.

Although many justices have gone through a metamorphosis from one philosophy to another, Judge Thomas would begin his tenure on the high court as an acknowledged conservative. Many will find the stark contrast with Justice Marshall offensive. The goals of these two men however are not so different. They both believe deeply in justice. However different the roads they would take to attain that justice, President Bush has clearly found a nominee whose character, integrity and intellect equal those of Justice Marshall.

[From the Chicago Tribune, July 2, 1991]

A NOMINEE WITH A MIND OF HIS OWN

When Clarence Thomas paused yesterday to look back over an improbable life that has taken him from poverty in the segregated South to the threshold of the Supreme Court of the United States, he was suddenly so overcome with emotion that he couldn't speak. It was a moment with deep emotional significance for the nation as well.

It reminded us all that at its best, this country still stands for the belief that every pereon should be allowed to rise as high as his abilities will take him. This ideal has not been realized in full in American society, but Thomas' nomination symbolizes our continued commitment to make it a reality, despite serious and sincere disagreements about how to reach that goal.

Critics question whether the quota-basking president has embraced his own quota for the Supreme Court, replacing a black with a black. They miss a cruoial point about the Supreme Court which is that it serves as guardian of our belief in "equal justice under law."

When Lyndon Johnson named the first black justice, Thurgood Marshall, in 1967, be provided something badly needed: visible proof that the court, and the law, are of, by, and for the people—all the people. Today, sad to say, that fact still needs affirmation.

It was rumored that Bush would pick a Hispanic for the job instead—a choice that had obvious political attractions, since Republicans are far more likely to attract Hispanio votes than black ones. The Hispanic judges who were mentioned as possibilities most likely would have stirred little of the controversy that the independent-minded Thomas certainly will. It took courage for Bush to set these considerations aside.

There is much to bs learned about the nominee in his Senate confirmation hearings, but he appears fully qualified for the job, bringing a wealth of experience in government unusual for someone of 43 years. A Yale Law School graduate, Thomas worked in the office of the Missouri attorney general and on Capitol Hill before joining the Reagan Education Department as assistant secretary for civil rights. In 1982 he became chairman of the Equal Employment Opportunity Commission, and since last year he has served on the U.S. Court of Appeals for the District of Columbia.

The coming controversy stems not from his credentials or his ability but his ideology. Thomas has been an unyielding opponent of racial preferences and of federal policies that he feels foster quotas. As head of the EEOC, he rejected the old policy of treating racial disparities as proof of discrimination, while scorning racial adjustments in aptitude tests as assuming "some inherent inferiority of blacks, Hispanics and other minorities."

For these and other stands, he was attacked by liberal lawmakers and organizations. But his views, whether one agrees with them or not were not formed without a full and deeply personal understanding of the plight of African-Americans. Senators and interest groups have every right to argue that Thomas is wrong on many racial issues;

they would be unfair and ill-advised to suggest that he is indifferent to racial justice.

Bush could have found many nominees who could have counted on easier approval by the Senate. Thomas will probably require a harder fight, but there is reason to think he's worth it.

JUSTICE IN THE NEW BALANCE

(By William Murchinson)

Neither Judge Clarence Thomas' race (black) nor his professional attainments (impressive) nor his personal dignity (immense) is likely to spare him a good old-fashioned media mauling. Not to mention what the Senate will do to him.

With any luck, nonetheless, the 43-year-old Judge Thomas is bound for the U.S. Supreme Court. He could occupy his chair for 40 years. That's until the year 2031—a time when American schoolboys won't remember whether George Bush or Cher was president way back in the '90s.

Judge Thomas' nomination to the court vindicates the Rev. Dr. Martin Luther King's belief—a conviction at least as widespread among whites as blacks—that race is no proper barrier to personal achievement. Fancy 35 years ago the idea of a black Georgian sitting on our highest court! Why, it just wasn't going to happen, such were the rigors of racial segregation.

It's very likely to happen now.

Not that Judge Thomas' race was the irrelevancy the president tried to make it out (any more than it was the obsessive factor the media, in questioning President Bush, sought to depict it as being).

Clarence Thomas is a host of things in addition to black: a federal appeals judge, a former chairman of the Equal Employment Opportunity Commission, a sound thinker, a patriot.

Now obviously it doesn't hurt that he has been nominated to succeed the court's only black member, Justice Thurgood Marshall. Reporters eager to trap the anti-quota president in what they regard as a philosophical inconsistency won't enjoy the reminder that Justice Marshall's primary qualification for the court, apart from a sharp legal mind, was his race. It shouldn't be forgotten that President Johnson, nominating Justice Marshall in a moment of enormous racial tension, spoke proudly of how the time had come for just this appointment. Such is politics, the art of which Johnson was past master.

The Supreme Court, technically an above-it-all judicial body, has never been more political than today. In picking Supreme Court appointees, a president thinks politically. It is folly to think otherwise.

The court is political in the sense that it has for 35 years presumed to order and reorder our most tense, most divisive political issues rather than refer them to the judgment of political bodies. To be sure, this disposition is changing fast. The court, with growing speed, as conservative members take their chairs, is changing fronts. In the court term just ended, the states gained, or rather regained, important tools for the prosecution of criminals and the safeguarding of society.

George Bush wants Clarence Thomas to participate in the court's overdue journey back toward judicial sanity and restraint. One gathers that this is Judge Thomas' own inclination—to walk wide of the activist, Type A judging so harmful to American jurisprudence since the time of Earl Warren; to defer, where possible, to the considered deliberations of elected lawmakers.

For just this reason, various media commentators and social prophets probably will try to flay Judge Thomas alive. Benjamin Hooks of the National Association for the Advancement of Colored People, as the media promptly pointed out to Mr. Bush (who feigned incredulity), is already after Judge Thomas' hide. Various senators—all the while expressing their commitment to Equal Rights for All and sniff-sniffing at the necessity of opposing a black man—will oppose him anyway.

Judge Thomas' wholly negative record on affirmative action, acquired during his long tenure on the Equal Employment Opportunity Commission, renders him more vulnerable yet.

Ongoing debate on the civil rights bill—at whose center is the controversy over racial quotas—helps to guarantee Judge Thomas a hot seat at hearings of the Senate Judiciary Committee.

Nonetheless, Judge Thomas' position on quotas is as traditional as it is popular. And Mr. Bush has important assets: power, prestige, high ratings in the polls; not least, in Clarence Thomas, an honorable and highly qualified candidate for our top court. The going will be rough and relentless, but if Judge Thomas is the man he's said to be, he should come through—in one piece and ready to roll.

[From the Wall Street Journal, July 3, 1991]

THE VIEWS OF JUSTICE THOMAS, ACCORDING TO JUDGE THOMAS

(By L. Gordon Crovitz)

The opinions on public policy he held before he joined the bench are getting a lot of attention, but the best way to predict how Justice Clarence Thomas would rule is to review how Judge Clarence Thomas has ruled. In his year on the federal appeals court in Washington, Judge Thomas wrote 19 opinions. His political enemies won't find much grist in these rulings, which are textbook examples of judicial restraint.

The cases deal with issues as diverse as an airport for Toledo, searches of crack dealers and a spat over dog-food claims. What is most important is the approach Judge Thomas took. In interpreting statutes and precedents, he used close reasoning and shunned any search for shadows, penumbra or emanations.

The case challenging the expansion of the Toledo airport asked whether the Federal Aviation Authority complied with all the environmental regulations before approving the new plans. The plaintiffs invoked the broadly worked National Environmental Policy Act. In upholding most of the FAA's action, Judge Thomas showed a keen wit. He wrote, "Just as NEPA is not a green Magna Carta, federal judges are not the barons at Runnymede." He said that judges enforce the law "by ensuring that agencies comply with NEPA's procedures, and not by trying to coax agency decision makers to reach certain results." *(Citizens Against Burlington v. Busey)*

His most important constitutional ruling was on the doctrine of standing, which is a key limit to judicial activism. The Constitution requires a case or controversy before judges can issue an opinion; there must be real parties with real legal issues. Judicial activists often wave non-cases into court by giving special-interest groups—and occasionally even dolphins and trees—standing to sue. Judge Thomas took the more traditional approach in a partial dissent when a ferry company challenged an exemption from a regulation that the Interstate Commerce Commission granted to one of its competitors.

Judge Thomas wrote in a partial dissent that the ferry company had no business in court because it wasn't the "aggrieved" party, as required by the statute regulating litigation involving the ICC. The company wanted the judges to force the ICC to prepare an environmental impact statement before granting new routes to its competitor. "I agree that as a matter of policy, it probably should," Judge Thomas wrote. "As a matter of law, however, the Commission has no power to regulate ferries for environmental reasons."

This meant the ferry company had no standing to sue, so judges had no right to hear the case. "When federal jurisdiction does not exist, federal judges have no authority to exercise it, even if everyone—judges, parties, members of the public—wants the dispute resolved," he wrote. "A federal court may not decide cases when it cannot decide cases, and must determine whether it can before it may." This is an important statement of separation of powers—not the view of a justice who would take social questions away from the political branches of government. *(Cross-Sound Ferry Services v. ICC)*

Judge Thomas also showed his judicial restraint in a case of ineptitude by the Federal Energy Regulatory Commission. Judges have repeatedly ruled that regulators used arbitrary calculations to determine the proper rate of return for a Tennessee gas pipeline. Judge Thomas warned FERC that he was tempted to grant the pipeline company's request for a certain rate. But, he wrote, "legitimate concerns about judicial overreaching always militate in favor of affording the agency just one more chance to explain its decision." *(Tennessee Gas Pipeline v. FERC)*

One case at first glance seems to raise constitutional questions, but turns out to be more limited. Federal workers asked for a preliminary injunction against a recent law that bars them from accepting payment for articles or speeches. This raises free speech and property rights questions, but Judge Thomas's opinion was limited to whether the trial court was right to deny a preliminary injunction. He agreed that the plaintiffs did not risk irreparable harm by waiting for the trial court to rule on the case's merits. *(NTEU v. U.S.)*

A pair of business cases discloses a sophisticated approach. He ruled against a Justice Department claim that a merger in the market for underground drilling rigs would violate the antitrust laws. The merger between a Finnish company and a French subsidiary of a Texas firm would give the company a large U.S. market share, but Judge Thomas applied the Chicago School jurisprudence that now guides the Supreme Court. Contrary to the Justice Department's big-is-bad approach, he ruled that a large market share does not by itself signal barriers to entry for new competitors. *(U.S. v. Baker Hughes)*

Another case arose when two pet-food companies exchanged nasty accusations of misleading advertising—one dog food claimed it prevented hip disease, the other claimed it was preferred by more veterinarians. Judge Thomas reversed part of a damage award because there was no "finding of willingness or bad faith," as required by the false-advertising statute. This emphasis on bad intent, often overlooked in securities and environmental cases, is an important limit on liability. *(ALPO v. Ralston Purina)*

Seven of Judge Thomas's opinions were appeals from drug cases; as a justice, he will have some notion of what it is the police are up against. Most of these cases were requests by defense lawyers for a judge to find some

technical problem with a search, seizure or confession, which Judge Thomas refused. In one case, the defendants tried to throw a gym bag containing crack into a sewer when the police approached. Other seizures included beepers, a favorite tool of the drug trade. Judge Thomas referred to one neighborhood as "an open-air drug bazaar."

His close reading of a statute led him to reverse part of a criminal conviction of a dealer named Keith Long. The police used a search warrant to find cocaine, butane torches for processing the drug and large amounts of cash. They also discovered a revolver between the cushions of a sofa. A jury convicted the defendant on the drug charges, but also under a law against using or carrying a weapon in drug trafficking.

Judge Thomas reversed the firearm conviction. He said the prosecution reasoning went too far: "Long was connected to the drugs; the distribution of the drugs was facilitated by the gun; since Long thus derived benefit from the gun, he 'used' it." He rejected this view, saying it would mean "that the word 'use' has no discerning boundaries."

Judge Thomas is a conservative judge, if this means that he views his job as interpreting the law and not making it up or ruling for or against parties based on who they are. A 30-year period of judicial activism from the Supreme Court is now destined to end. Even liberals should be able to resolve themselves to a Justice Thomas, who would know his job is the law and not politics.

[From the Washington Times, July 3, 1991]

UNQUALIFIEDLY QUALIFIED

In tapping Clarence Thomas to fill the Supreme Court seat of Thurgood Marshall, President Bush has chosen one of the most promising jurists in the nation. Despite his relatively youthful 43 years, Mr. Thomas already has shown that he possesses a brilliant legal mind and a commitment to public service in the best sense of that term.

Mr. Thomas' origins are humble. His family worked hard to enable him to go to college, and he worked hard as well. In his statement to the press after Mr. Bush announced his nomination, he choked with emotion as he thanked his grandparents, his parents and the nuns from his Catholic school days, "all of whom were adamant that I grow up to make something of myself."

That he did. He graduated from Holy Cross and went to the Yale Law School, and when finished he went to work for the Missouri attorney general, now Sen. John Danforth. He made a lasting impression. "I know him to be an absolutely first-rate lawyer, and beyond that, I know him to be a first-rate human being," Mr. Danforth has said. In 1977, Mr. Thomas left government to practice law in the private sector, for Monsanto Corp., before rejoining Mr. Danforth as a legislative assistant in Washington in 1979.

In 1981, the Reagan administration named Mr. Thomas to head the civil rights division of the Education Department. In 1982, he went on to head the Equal Employment Opportunity Commission, when in the course of eight years he compiled a distinguished record of aggressive enforcement of anti-discrimination laws in the workplace. In those years, he also developed a reputation as a forceful proponent of equality of opportunity. He championed the idea of a colorblind Constitution and opposed racial quotas and other devices that gave legal status to groups rather than individuals. He also forcefully opposed the intellectually fashionable 1980s doctrine of equal pay for "comparable worth," a notion that, had it prevailed, would have had judges setting pay scales for private and public enterprises throughout the United States.

In 1990, President Bush named Mr. Thomas to the Court of Appeals of the District of Columbia. He was widely seen at the time as a rising star and a likely contender for a Supreme Court seat. That, combined with his commitment to a colorblind society, meant he was subjected to an unusually high degree of scrutiny by political opponents. The American Bar Association twice undertook full background investigations and pronounced him "qualified." Senate Judiciary Committee Chairman Joseph Biden issued a demand for him to produce thousands of pages of documents from his EEOC years. If any of the senators were hoping to find something to derail his confirmation, they failed to do so.

Meanwhile, Democratic Sens. Sam Nunn and Charles Robb, convinced of his abilities, introduced him to the Judiciary Committee and endorsed his nomination. Mr. Thomas forcefully defended his record at the hearing, and the only Judiciary Committee member who opposed him was Sen. Howard Metzenbaum.

In his year and a half as an appeals court judge, Mr. Thomas has further distinguished himself. He has written firm opinions on criminal justice matters and is obviously sensitive to the proper role of the federal courts.

President Bush has picked the right person. The Senate should move quickly to confirm Clarence Thomas.

[From the Manchester (NH) Union-Leader, July 3, 1991]

NH CLASSMATE: NOMINEE A VOICE OF MODERATION

(By John Distaso)

A Manchester attorney who was a college classmate of U.S. Supreme Court nominee Clarence Thomas remembered him yesterday as intelligent and quiet student who was a voice of moderation during campus anti-discrimination rallies.

Bruce F. Dalpra, who was graduated from the College of the Holy Cross in Worcester, Mass., in 1971—the same year as President Bush's newest Supreme Court nominee—said the judge was a member of the Black Student's Union, but said he espoused working within the system, not tearing it down, to end inequities and discrimination.

"Clarence wasn't a big man on campus, even as far as the Black Students Union went," Daipra told The Union Leader. "He was more of a voice of moderation."

Dalpra said he personally enjoyed attending rallies and meetings of all ideologies—"from the Young Republicans to the SDS (the radical left Students for Democratic Society)"—and recalled hearing classmate Thomas speak five or six times.

He also was in a class—either history or philosophy, he said—with Thomas during their freshmen or sophomore year. The thing that stands out the most about the judge's classroom presence was, "He was very, very intelligent," Dalpra said.

Dalpra recalled that there were comparatively very few minority students at Holy Cross, but he also recalled that the Black Students Union was vocal.

Thomas "was probably one of the more moderate spokesmen for the organization. He would advocate working in the system, a quiet type of protest. He wouldn't advocate burning down buildings."

"He was very reserved and very well-spoken," Dalpra said. "But my guess is that Clarence will not be as conservative on the bench as some people think."

Bush's nomination of Thomas came three weeks short of a year after New Hampshire's David Souter was named to succeed Justice William Brennan on the high court.

Souter was championed through the confirmation process by his long-time friend, Sen. Warren B. Rudman, R-N.H.

In Washington, there was speculation yesterday that Missouri Republican Sen. John Danforth, who formerly employed Thomas as an alde, would usher Thomas through the process much as Rudman did for Souter.

Although Danforth's office could not confirm the speculation, Rudman spokesman Paul Jacobson said that Rudman's office already had been in touch with Danforth's.

Jacobson, noting that Rudman and Danforth are friends and "close, ideologically," said Rudman legal aid Thomas Polgar called the Danforth camp yesterday to ask if they needed any advice.

"I had a reporter from USA Today tell me that Sen. Rudman set the model for how to shepherd a U.S. Supreme Court nominee through the process," Jacobson said.

But Jacobson said, "There are no plans in our office to play any active role in the Thomas nomination."

Rudman, he said, has not even made up his mind yet on whether he will support Thomas.

"Sen. Rudman won't play a heavy role in this, other than having already sort of set the model on this," said Jacobson.

Another member of Souter's "confirmation team," former N.H. Attorney General Thomas Rath of Concord, said Judge Thomas will receive help from experts in the Bush administration, but he said it will be even more helpful if Danforth does for Thomas what Rudman did for Souter.

Rath, who, like Rudman, is a close personal friend of Souter, said he doubts Thomas realizes what kind of scrutiny he is about to undergo.

"He'll have to endure an inoredible public microscope," Rath said.

Rath said he supposed that the fact that Thomas is black, was divorced and is now married to a white woman also will be raised as an issue, just as the national media tried to suggest that Souter is homosexual because, at age 50, he is unmarried.

"Neither one is an issue," Rath said. "But that is the nature of the public microscope. It's the People magazine syndrome.

[From the Washington Post, July 3, 1991]

WHAT MANNER OF MAN, CLARENCE THOMAS?

(By William Raspberry)

You'll be hearing a lot about Clarence Thomas over the next few weeks, as President Bush's newest nominee for the Supreme Court is put through his paces.

Some of what you will hear will be merely factual: Thomas is a man of limited judicial experience and not a lot of courtroom experience for that matter.

But you'll also be hearing a lot of talk about his suspect politics, the fact that he is a Republican and, worse, a conservative Republican—and worse still, a black conservative Republican. What manner of man could he be, as a white friend put it to me the day of the nomination, "to work against his own people"?

Her reference was to Thomas' tenure as chairman of the Equal Employment Opportunity Commission, but it started me thinking about the man whose path has occasionally crossed mine over the last decade.

What manner of man is he? Conservative? Yes. At odds with the civil rights establish-

ment? Frequently. The best person to succeed Thurgood Marshall on the Supreme Court? Assuredly not. But an idiot, insensitive black man who is "against his own people"? Not for a minute.

You can't understand Thomas without knowing something of the two principal influences in his life: the illiterate grandfather who raised him and the nuns who taught him.

"I have to look at my own life and say, what is it that made me different from my sister?" he told me in an interview eight years ago. "We come from the same place, the same genes, the same mother and father, the same circumstances. But we were raised by different relatives. She was raised by my mother's aunt; my brother and I were raised by my grandfather. My brother and I graduated from college, and my grandfather was functionally illiterate. He could barely read and write—read enough to read the Bible. But he was a tough old man."

That grandfather, Myers Anderson, never taught young Clarence and his brother to ignore discrimination. How could he, when the boys watched the old man being humiliated by whites in their hometown of Savannah? But he taught them that the way to defeat discrimination was through hard work and education. He put an end to their hooky-playing and made them study. He made them get up early in the morning to work with him on his fuel-oil delivery service. And he scrounged the $30 a year to send Clarence to Catholic school.

"'I'm doin' this for y'all,' he'd say, so y'all don't have to work for the white man, so y'all don't have to take what I had to take.' Then he'd say things like there's no problem elbow grease can't solve, or 'Old Man Can't is dead. I helped bury him.' That sort of upbringing clearly affects your sense of justice, technique—everything—not only intellectually but emotionally.

"My sister? AFDC. Four kids. She's a good person, a super person. But she's uneducated, on welfare. She works in the crab factory, picking crabs just like my mother did."

The nuns who taught him reinforced Myer Anderson's lessons of hard work and self reliance.

The sisters at his school taught him, he said that "it is better to be respected than liked Popularity is unprediotable and vacillating. Respect is a constant and may lead to popularity, but is not dependent upon it. There is no way I could have survived if it had not been for the nuns—our nuns—who made me pray when I didn't want to and didn't know why I should, who made me work when I saw no reason to, who made me believe in the equality of races when our country paid lip service to equality and our church tolerated inequality, who made me accept responsibility for my own life when I looked for excuses."

Well, fine, his critics say. But isn't Thomas saying, with his rejection of the preferred civil rights remedies, that the society—the government—has no role in correcting for the evils of racism?

Not quite. He believes strongly that the proven perpetrators of discrimination must be punished and their specific victims compensated. Where he parts company with the civil rights establishment is on the question of group remedies. Some wrongs, he insists, simply cannot be set right. Again he illustrates his point with a childhood recollection.

He and some of his buddies were playing penny blackjack on the back porch when it became obvious that one kid was winning all the money. According to Juan Williams's account in the Atlantic monthly:

"Thomas finally saw how: The cards were marked. The game stopped. There were angry words. Cards were thrown. From all sides fast fists snatched back lost money. There could be no equitable redistribution of the pot. The strongest, fastest hands, including those of the boy who had been cheating, got most of the pile of pennies. Some of the boys didn't get their money back. The cheater was threatened. The boys who snatched pennies that they had not lost were also threatened. But no one really wanted to fight—they wanted to keep playing cards. So a different deck was brought out and shuffled, and the game resumed with a simple promise of no more cheating."

[From the Savannah Morning News, July 5, 1991]

THE THOMAS NOMINATION

It was rumored that Judge Clarence Thomas was being groomed for the U.S. Supreme Court when President Bush chose him to fill a high-profile vacancy on the federal appellate court in Washington, D.C., last year.

This week, the former Savannahian got the prized nomination to fill the vacancy created by Justice Thurgood Marshall's retirement. The president couldn't have made a finer choice.

Judge Thomas has a long list of professional credentials in several branches of government that would serve him well on the high court. He worked as an assistant attorney general in Missouri for three years. He served as chairman of the Equal Employment Opportunity Commission during the Reagan and Bush administrations. He has served on the U.S. Circuit Court of Appeals in the District of Columbia since March of 1990, winning the respect of his colleagues.

In fact, those liberal critics who are sniping at Judge Thomas because of his past conservative leanings should listen to what Chief Judge Aubrey E. Robinson Jr. of the appeals court had to say about the nominee. He called him "a very hard-working person . . . He'll be very conscientious." And Judge Robinson is no right-winger. He's liberal. And like Judge Thomas, he's black.

But the written resume of Clarence Thomas only tells half of the story. The other half, as many people in Savannah already know and the rest of the country is finding out, is just as impressive, if not more so.

"Only in America could this have been possible," Judge Thomas said shortly after his nomination. It was a fitting remark for someone who was born in a house without plumbing in the Pinpoint community 43 years ago and knew what it was like to sit in the back of the bus and not be able to find a job at any Atlanta law firm after getting out of Yale Law School. Yet he had the courage, conviction and support not to let poverty or racism stand in the way of his dreams.

Thus, those who question where Judge Thomas stands on civil rights actually come close to insulting him. He doesn't have to be told how important it is that every man be judged by the content of his character, not the color of his skin. He's lived it.

President Bush is predicting that his nominee will win Senate confirmation. All things being equal, he should. But given the politicization of the process, as well as the reluctance of some liberals to see the court become more mainstream, things could get a little rocky. Some Senators plan to grill him on some hot-button issues, like abortion, in hopes of getting a response that would kill his chances and politically embarrass the president.

But the upper chamber of Congress should be reminded to judge him on his merits as a jurist. He shouldn't be evaluated by a litmus test that some politician concocts.

In any case, it's a honor just to be considered for a Supreme Court post, let alone be nominated. Judge Thomas, because of his professional and personal achievements and his demonstrated ability to grow in the positions he has held, deserves a fair hearing.

And if he gets one, Savannah will soon proudly boast that one of its own, a home boy from Pinpoint, is one of nine distinguished members of the highest court in the land.

[From the Cincinnati Enquirer, July 7, 1991]

JUDGE THOMAS—SENATORS WILL HURT THEMSELVES IF THEY IGNORE PROPRIETY

The Constitution is vague about the Senate's role in dealing with presidential nominations to the Supreme Court. It simply requires that the Senate confirm appointments to the federal judiciary. As the Senate and its Judiciary Committee prepare to pass on President Bush's nomination of Judge Clarence Thomas to fill the seat vacated by the retirement of Justice Thurgood Marshall, it's clear that some senators have an extraordinary view of their function. If the senators go beyond propriety in their forthcoming inquiry into Judge Thomas' qualifications, they risk injuring themselves more than they injure Judge Thomas.

Ohio's Sen. Howard Metzenbaum, for one, is determined to learn how Judge Thomas might rule on an abortion case.

Sen. Patrick Leahy, D-Vt., is determined to ask Judge Thomas, "What do you think of settled law?"

Other members of the Judiciary Committee seem appalled by the up-coming inquisition. Said Sen. Arlen Specter, R-Pa., "I do not think it is appropriate to ask a nominee the ultimate question as to how he is going to decide a specific case."

Adds Sen. Orrin Hatch, R-Utah, "Literally nobody nominated for the Supreme Court should give his or her views with regard to cases that might come up in the future."

Wise heads, such as Senators Specter and Hatch, however, are unlikely to prevail. And Judge Thomas is probably going to find himself in the shoes of a candidate for the Hamilton County Municipal Court who is asked during the campaign what he's going to do about drunk drivers. The prudent respond that they will uphold law; the grandstanders promise to throw the book at them.

The Senate and the nation needn't buy a pig in a poke. They can and should ask Judge Thomas about his judicial philosophy. They should examine his public record, including his judicial opinions and his other writings.

As they do so most will be pleased—but some undoubtedly will be disappointed—to find a jurist who loves America.

"I have felt the pain of racism, as much as anyone else," he said a few years ago. "Yet I am wild about the Constitution and the Declaration [of Independence] . . . I believe in the American proposition, the American dream, because I've seen it in my own life."

Such a man can't be insensitive or indifferent or recklessly ideological. Such a man could be a distinguished justice.

KMOX RADIO EDITORIAL

Subject: The Clarence Thomas Nomination
Broadcast: Tuesday, July 9, 1991, 8:20 AM; 12:30 PM.

Hard work, religious faith, family, individual responsibility. These all-American values underline our nation's history. Pioneers

who opened the West believed in them. So did the immigrants who built our cities. So does Judge Clarence Thomas. That's why his nomination to the United States Supreme Court is significant. A graduate of Holy Cross College and Yale Law School, he has twice served on the staff of John Danforth, first as Assistant Attorney General in Missouri, and then as a legislative assistant, when Mr. Danforth was elected to the Senate. Clarence Thomas was on the legal staff of Monsanto Company, Assistant Secretary of Civil Rights in the U.S. Department of Education and Chairman of the U.S. Equal Employment Opportunity Commission. He currently serves as Judge of the U.S. Circuit Court of Appeals in Washington, D.C.

Oh, yes, Clarence Thomas is black. He is living proof that members of his race or any ethnic minority can make it to the top in this nation. Judge Thomas has risen through the ranks because of a solid family background and his own ability and hard work.

There are some who criticize him for his emphasis on self-help, rather than government programs for minorities. This is misguided. Judge Thomas is already an outstanding role model for minorities and all Americans striving to better themselves. His background would have even greater impact if he became a Justice of the United States Supreme Court.

[From the Washington Post, July 10, 1991]

THOMAS AND THE BLACK MAINSTREAM

(By William Raspberry)

The speaker, having recounted his own humble, race-restricted origins, urged his NAACP audience to take "pride in endeavor and accomplishment, discipline of mind and body . . ., not succumbing to those who talk about taking shortcuts." The young people in the audience, he counseled, shouldn't be afraid to accept menial jobs or to say "yes, sir" and "yes, ma'am," if that is what it takes to get where they want to go. "If you know you have to be doubly prepared, be doubly prepared, and then get on with doing the job."

He cautioned against race-specific approaches to solving the problems that confront black people. "Only when America understands that they are not black problems but American problems will we be able to solve them." Three things about that speech, delivered five years ago and greeted with near-unanimous enthusiasm:

First, the speaker was a lawyer working for the government, not a nominee for the Supreme Court, Second, it wasn't Clarence Thomas; it was Doug Wilder, then lieutenant governor of Virginia. And third, the remarks were well within the mainstream of black thought. A full decade earlier, Jesse Jackson was warning against the rhetoric that leads black youngsters to see themselves as society's victims rather than as human beings capable of controlling their own destinies. "Nobody can save us from us—but us," he used to say.

Why is it that when a Wilder or a Jackson says these things they are taken as necessary, if uncomfortable, truth, but when a Thomas says them they are taken as evidence of personal smugness, of his lack of interest in the plight of his own people?

The reaction, it seems to me, is less to what is said than to who says it. We know who Jackson and Wilder are—both for their battles waged on behalf of blacks and for their allegiance to liberal Democratic politics, which has become the black political orthodoxy.

But we don't know black conservatives—we doubt that it is legitimate even to be a black conservative. What Thomas is speaks so loudly to us that we cannot hear what he says.

None of this, I should note, speaks to Thomas's fitness for the Supreme Court. He wouldn't have been my choice. But then no one likely to be appointed by a conservative Republican president would be my choice. I believe the court is too conservative already—too devoted to the privileges of authority and too uncaring about the righte of ordinary people, too wrapped up in governmental theory and too innocent of experience as outsiders in a society dominated by white men.

Given an unfettered choice, I'd opt for a liberal whose bona fides include a history of concern for the underdog.

But the choice isn't unfettered. We're playing "Let's Make a Deal" with a host who offers us a choice between a serviceable Chevrolet and a goat, and we're holding out for a curtain that conceals (we hope) a Mercedes Benz with an interior designed by Thurgood Marshall. Well, there's no Benz behind any of the curtains. If we're not prepared to deal with the goat, we'd better take the Chevy.

Granted it's a strange Chevy. We don't know many black Americans in high places who will dismiss affirmative action out of hand, or who will argue against government catch-up programs for blacks or who will align themselves with conservative politicians. We've seen conservatism and racism wearing the same garb so often that we've come to believe you can't have one without the other.

Well, I'm not convinced. At least some of Thomas's conservatism finds echoes in black America, including the black establishment. Note the remarks of Jackson and Wilder. And the rest of it, no matter how much I might reject it, is inevitably tempered by his experience as a black man whose own opportunities have been blunted by racism.

As a friend of mine puts it, "Given a choice between two conservatives, I'll take the one who's been called 'nigger.'"

I believe with this friend that Thomas is sufficiently acquainted with racism to recognizs it when it comes before him on the Supreme Court, that he is independent enough not to see the critical issues in the light of his own experience and that he is smart enough to find in the Constitution protection against the presumptions of white privilege.

Maybe he really does believe that there's nothing the government can or should do about entrenched racism, but I doubt it. I hear him the same way I hear Wilder and Jackson and scores of other plain-spoken blacks. I hear him saying with Wilder that blacks are foolish to wait for whites to deliver us, that we must return to the old values that worked for us in harsher times than these, that we must "redig the wells our fathers dug."

And I hear him saying with Jackson that whatever succor may exist in bigger budgets and greater concessions from the larger society, there will remain work that only we can do, that "nobody can save us for us—but us."

[From the Washington Post, July 10, 1991]

THOMAS PRAISES TARGETS OF HIS BARBS: NOMINEE ACKNOWLEDGES DEBT TO MARSHALL, CIVIL RIGHTS MOVEMENT

(By Helen Dewar and Ruth Marcus)

Supreme Court nominee Clarence Thomas, under fire from some civil rights leaders, yesterday went out of his way to praise the movement and leaders such as retiring Justice Thurgood Marshall for contributing to Thomas' rise out of poverty and segregation.

"I have been extremely fortunate," Thomas told reporters as he met with Sen. Strom Thurmond (S.C.), ranking Republican on the Judiciary Committee, in his second day of personal calls on senators who will vote on his nomination this fall.

"I've benefited greatly from the civil rights movement, from the justice whom I'm nominated to succeed [Marshall, from organizations such as the Urban League and the NAACP" as well as "mentors" such as Sen. John C. Danforth (R-Mo.), said Thomas, who sits on the U.S. Court of Appeals.

Since his nomination, Thomas has faced criticism for being the beneficiary of a movement that he has often attacked. Yesterday's comments appeared aimed at deflecting charges from some black leaders that Thomas has spurned the civil rights movement in his opposition to affirmative action and school busing and his outspoken criticism of the civil rights establishment.

Thomas volunteered the comments after Thurmond praised him for having "brought yourself up by your own bootstraps." In a floor statement shortly afterward, Thurmond took note of Thomas's nod to the civil rights movement and said he did "not believe Judge Thomas will undermine the progress that has been made in this area."

The NAACP delayed a decision Monday on whether to endorse Thomas, saying it wanted to meet with the conservative black jurist before taking action. The group's executive director, Benjamin Hooks, told NBC-TV's "Today" show yesterday that "his record, as it is known now, is very, very, unfavorable."

Thomas has declined to comment on whether he would accept the NAACP invitation, but senatorial supporters have indicated he is unlikely to do so.

Asked whether the administration has suggested that Thomas seek to modify civil rights groups, White House spokeswoman Judy Smith said, "Judge Thomas is an independent man who expresses his own views."

To almost every question put to him by reporters yesterday, Thomas has said he was "under wraps." When asked who put him under wraps, he pointed to Frederick D. McClure, the White House lobbyist on Capitol Hill.

Meeting later in the day with Thomas, Senate Judiciary Committee Chairman Joseph R. Biden Jr. (D-Del.) said he has told President Bush that hearings on Thomas probably will begin shortly before or after the Senate returns Sept. 10 from its August recess. This would mean that Thomas, if confirmed, could join the court in time for the opening of its fall term in early October, Biden said.

Responding to controversy over how extensively Senators should question Thomas about his views on abortion and other issues, Biden said: "The judge [Thomas] can answer any questions he wants and Senators can ask any questions they want. It's totally up to them."

Later, Senate Minority Leader Robert J. Dole (R-Kan.) condemned what he called "litmus testers" who plan to quiz Thomas about specific cases, saying "this litmus test approach has been rejected by anyone who is serious about maintaining the independence of the federal judiciary."

Also yesterday, former attorney general Griffin Bell, who served in the Carter administration, told reporters after a breakfast at the White House that he supported Thomas. "I doubt very much he's against affirmative action, giving people a chance," Bell said. Thomas has specifically criticized two major affirmative action cases in which the Carter

Justice Department supported minority preferences at the Supreme Court.

Yesterday's comments were not the first time Thomas has given credit to the role of the civil rights movement in general and the NAACP in particular.

But in the past, he has also not hesitated to take on the civil rights establishment. In a 1984 interview with The Washington Post, he lambasted black leaders who just "bitch, bitch, bitch, moan, and moan, whine and whine" about the Reagan administration.

In an interview three years later with Reason magazine, a conservative, free market-oriented journal, Thomas said he could think of no areas in which the civil rights establishment was then doing good work.

"I can't think of any," he said, adding, "I'm the wrong person to ask, because of the malice with which they have treated me."

Thomas criticized Hooks by name in a 1987 letter to the Chicago Defender, responding to Hooks' allegation that the Reagan administration was seeking to eliminate the Equal Employment Opportunity Commission (EEOC), which Thomas headed befors becoming a federal appellate judge last year.

He called Hooks's comments "absurd salvos" and "ridiculous assertions," and said "those who consistently use EEOC as a whipping boy" were unwilling "to let the [administration's] acts get in the way of good rhetoric."

Thomas also criticized Marshall, saying he found "exasperating and incomprehensible" the justice's criticisms of the Constitution as a document that was "defective from the start."

[From the South DeKalb (GA) News-Sun, July 10, 1991]

SUPREME COURT NOMINEE IS MENTOR TO DEKALB YOUTH

(By Kirk Martin)

Twelve-year-old Mark Davis of Scottdale has a dream, and a DeKalb School System official and a U.S. Supreme Court nominee want him to achieve it.

His single-parent home and low income background prompted his teachers at Avondale Elementary School to label Davis as a "high risk" student, a candidate for the system's Teacher-Student Mentor Program.

Frank Winstead, director of educational resources for the schools, was only vaguely aware of the program as he visited Avondale one day in 1990. Margie Henderson, library media specialist there, introducted him to the program hy way of introducing him to Mark Davis.

"The thing that struck me was his eyes. They were so expressive," Winstead said.

A mentor was born. Winstead volunteered to spend time with Davis during the school day as a mentor, but the two soon ventured out for after-school outings. A turning point, Winstead remembers, was a February 1990 fishing trip the two took together.

Winstead said the two had stopped for breaskfast at a restaurant on the way to the lake when Davis said out of the blue, "I want to be a lawyer. I want to be a doctor."

Thinking fast, Winstead remembered seeing a news article the night before about the appointment of Georgia-born lawyer Clarence Thomas to the U.S. Court of Appeals.

"Fortunately, I had read that letter," Winstead said.

He let Thomas know about the youth's comment in a letter that included photos of the two with the fish they caught that day. Thomas responded in an April 6 letter.

"Mark, you can be a doctor if you really want to. But it is not going to be easy. In fact, it is going to be very, very hard. It is up to you to make up your mind now if being a doctor is important to you. The decision you will have to make is whether being a doctor is so important that you will work harder in school and at home than anyone has ever worked." Thomas wrote, encouraging Davis to write to him again.

Winstead and Davis began an occasional correspondence with Thomas as he settled into his new offices in the Washington, D.C. Court of Appeals. Thomas also exchanged letters with Davis' mother, Brenda Davis. At one point, Thomas even sent to the 12-year-old a set of encyclopedias that had once belonged to his own children. That was fresh in the minds of Mark Davis and his friends when they heard recently that Thomas had been nominated by President George Bush to the U.S. Supreme Court.

Since they first established their mentor student relationship and their friendship, Winstead and Davis have been on several other outings, including concerts, a University of Georgia football game and mors fishing trips.

Both Davis and Winstead believe the fishing trip and their conversation about Thomas was a breakthrough for them.

"I was reading a book in the library, and this guy came in to talk with Ms. Henderson," Davis remembers of their first meeting. He admits having been a bit apprehensive when he first encountered Winstead.

Davis has resolved to study harder, especially in science and mathematics, so he can reach his dream of being a doctor. "I like learning about the human body," he said.

Winstead believes he is already seeing a change in Davis' academic successes. "He made the honor role. He's never done that before."

[From the Washington Post, July 11, 1991]

LAST GASPS OF LIBERALISM

(By George F. Will)

Liberalism's moral ostentation, which is proportional to and related to liberalism's recent impotence, was on display the other day when Derrick Bell, a fervidly liberal professor of law at Harvard, said he hoped that when Clarence Thomas is on the Supreme Court he will come to realize "that this is not the 19th century."

Bell's limp insult reeks of condescension and demonstrates the banality of contemporary liberalism even in its invective. But there is a 19th-century aspect of Thomas. He could have stepped from the pages of those novels 19th-century readers loved, novels of astonishing upward mobility by strivers who succeed by pluck and luck.

That is why contemporary liberalism is doubly distressed by Thomas. He will make the Supreme Court still less hospitable to liberals trying to use it as a surrogate legislature. And his national prominence will vivify an alternative to the liberal model of black experience and politics.

If Thomas becomes a paradigm of the proper black stance toward the challenges of American life, the intellectual and political foundations of contemporary liberalism will be threatened.

Liberalism's intellectual core is now victimology, the doctrine that minority groups, victimized by America's refusal to recognize various "rights," comprise an American majority. Liberalism's agenda is the multiplication of "rights," by legislation if convenient, by litigation if necessary or expeditious. This liberalism represents a third and degenerate stage in the defining of freedom in America.

At the time of America's founding, freedom was understood as freedom from government. The Civil War gave birth to a more complex conception of freedom, one suited to the exigencies of an industrial society: Freedom can sometimes be enhanced by exercises of government power. But today's liberalism defines freedom as the result of aggrieved, irritable, elbow-throwing groups getting government to create for them group rights—enforceable entitlements for social space and claims against the community.

Politically, this doctrine makes the liberal party, the Democrats, the dispenser of group entitlements to clients of government. In presidential politics. Democrats are now particularly dependent on the loyalty of two large blocs, blacks and government workers. (At the 1976 convention that nominated Carter, approximately one-quarter of all delegates and alternates were employed in public education. Guess which president created the Education Department?)

Democrats are understandably alarmed by the prospect that two related expansions—of the black middle class and of conservatism in the black community—might drive the Democratic share of the black vote down to, say, 70 percent. Even that would make the Democrats' path to power significantly steeper. Hence the fury directed against blacks who stray, ideologically, from the liberal plantation.

The Thomas nomination elicits fake hysteria from liberals who are happiest when unhappy—when pretending that tyranny is descending. Kate Michelman, a pro-abortion campaigner, says that if Thomas helps overturn *Roe v. Wade*, he will "set this country back 150, 200 years," Or 18.

Actually, not even that. Even before the 1973 abortion ruling, 16 states with 41 percent of the nation's population had liberalized abortion laws. Laws follow culture. Abortion is now one of the most common surgical procedures. Pro-abortion forces might consider trusting the persuasive processes of democracy.

A significant portion of the nation's political and media elites, who have seen enough evidence to know better, nevertheless believe there is a leftward-moving ratchet in history: History moves only to the left, never back.

But it does move rightward. Here is how it happens in the judiciary.

The day Justice Marshall resigned, the court ruled, 6 to 3 (with Marshall dissenting), that "victim impact evidence" can be presented to juries at the sentencing stage of capital cases. That is, the Constitution cannot be properly read to forbid telling juries about the character of the murder victim and the suffering of the victim's family.

In 1987 the court ruled 5 to 4 to read the Constitution the way the court in 1991 considers improper. But 11 days after that 1987 decision, Justice Powell resigned. The day after that, in Tennessee, a murder occurred that in four years became the case that the court, with a two-ninths different composition, used in June 1991 to reverse the 1987 decision.

Since 1987, Powell and Brennan have been replaced by Kennedy and Souter. Thus, a 5-to-4 ruling in one direction became a 6-to-3 ruling in the opposite direction.

Since 1968, when Nixon won while promising a more conservative judiciary, judicial nominations have been presidential campaign issues. Since 1980, two candidatse promising conservative nominations have won three presidential elections and have selected three-quarters of today's federal judiciary.

That grinding, cracking sound that has been coming from courts is the sound of a ratchet breaking.

[From the Wall Street Journal, July 11, 1991]

HURRAH FOR JUDGE THOMAS' CONSERVATIVE ACTIVISM

(By Stephen Macedo)

The Wall Street Journal and other conservative voices are right to express initial support for the nomination of appellate Judge Clarence Thomas to the Supreme Court. But they are right for the wrong reasons. Conservatives see Mr. Thomas as an advocate of judicial restraint and the jurisprudence of Original Intent. Mr. Thomas is not, however, cast in the Bork mold, and it would not be good news if he were. The real reason to celebrate the Thomas nomination is the seed of judicial activism in his writings—morally principled activism on behalf of economic and other personal rights.

In four published writings, penned near the close of his tenure as chairman of the U.S. Equal Employment Opportunity Commission. Mr. Thomas distanced himself from the Reagan administration's cramped reading of constitutional rights. These articles appeared in 1987 issues of the Howard Law Journal and of the Yale Law and Policy Review, in a 1988 book published by the Cato Institute, "Assessing the Reagan Yeare," and in a 1989 issue of the Harvard Journal of Law and Public Policy. Each of the articles is concerned with an aspect of civil rights, but all explore broader questions of constitutional interpretation. The articles fit snugly with what is known of Mr. Thomas's Catholic background, defend his actual performance at the EEOC and offer some tantalizing clues about what kind of justice he might be.

Mr. Thomas's writings are a catalog of Originalist anathemas. He repeatedly invokes "higher law," and denies that constitutional rights exist only because of some political act. He calls for a jurisprudence based on broad moral principles of freedom and equality. Far from being transfixed by the specter of judicial activism, he understands the pre-eminent democratic dangers of tyrannical majorities and elected officials run amok. He speaks eloquently of the need to recognize the place of economic liberties in the Constitution's scheme of values.

The Thomas constitutional vision is first and foremost Lincolnian: The Constitution should be read, as Lincoln read it, in light of the moral aspirations toward liberty and equality announced in the Declaration of Independence. These principles specify goals to strive for, and so their meaning cannot be exhausted by the specific understandings or practices of the founding generation.

Again like Lincoln. Mr. Thomas also insists that constitutional principles are politically educative Lincoln strove to hold the wrongness of slavery before the public mind in order to keep that horrid practice on the path of ultimate extinction. For similar reasons. Mr. Thomas insiste on getting the principle of equality right. The correct principle, as he sees it, is equal opportunity for individuals, not special entitlements for groups. Mr. Thomas condemns racial set-asides and other group preference policies on the ground that these teach dependence on government largesse and undermine individual self-reliance.

Mr. Thomas's opponents will undoubtedly point to his frequent invocations of "higher law" or "natural law." Mr. Thomas calls these "the best defense of liberty and limited government. . . . [and] of judicial review." Is "higher law" a stand-in for religion or merely personal opinions about morality? Does "natural law" mean a return to untrammeled laissez-faire?

There's nothing spokey about "bigher" or "natural law" law. It stands for the idea that some things are wrong, not simply as a matter of social convention or political fiat, but on more general or abstract grounds. So even where slavery, for example, is legally protected and accepted by local conventions, it is still an unjust infringement on human dignity and equality. Nearly everyone would accept that. Most of us believe in something like "natural" or "higher" morality. The question is whether moral judgments have any role to play when judges interpret the Constitution. Mr. Thomas appeare to think so, and for good reason.

Many parts of the Constitution can be interpreted without reference to morality—that a president must be 35 years old for example. But in some places the Constitution itself uses moral terms: The Preamble speaks of "establishing justice," the Eighth Amendment bans "excessive" bail and "cruel" punishments, the Ninth speaks of unenumerated "rights" "retained hy the people." And as Mr. Thomas reminds us, the Constitution presupposes and refers back to the natural-righte language of the Declaration of Independence. The Constitution itself makes morality relevant.

Morality always plays a role in constitutional interpretation, whether or not that role is acknowledged. Pro-government conservatives rely on a morality of majority power, which requires a narrow reading of individual rights. Liberal activists deploy a morality at odds with the Constitution's explicit and repeated protections for property rights and economic liberty. Judge Thomas's admittedly sketchy writings are compatible with a broad understanding of rights, an underetanding well-grounded in constitutional text and tradition.

There are many sources of constitutional meaning: the text and structure of the document, the tradition of ite interpretation. No theory—including one that invokes higher moral principles—provides all the answers. Morally principled activists argue only that moral judgment has a role to play.

If Mr. Thomas means it when he says that "freedom is the main source of all that is good politically," then he should be prepared to recognize a right to privacy. Privacy is not explicitly mentioned in the Constitution, but is well-supported by principles clearly present in the founding document. And if he means it when he says that economic liberties are "a vital part of the rights protected by constitutional government," then he can press for meaningful review of laws infringing on economic liberties. The point is not to charge back to wild-eyed activism, left or right. The point is to acknowledge that an active and principled Supreme Court is a necessary counterbalance to the ever more powerful majoritarian branches of government.

The Thomas nomination provides conservatives with a timely opportunity to reassess their attitude toward the Suprsme Court. It's time to stop fighting the last war: Warren Court activism. It's time to embrace the unique contribution that the court can make to the core values of the American political tradition: individual freedom, equal opportunity and limited government.

The promise of Clarence Thomas is that of a principled judicial activism that honors the whole range of constitutional values. This promise cannot be realized unless conservatives get over their wornout fetishes of judicial deference and majoritarianism. The court remains what the Founders hoped it would be: one great bulwark of limited government and individual freedom. The conservative voice should help define and defend those freedoms.

[From the Washington Post, July 12, 1991]

CLARENCE THOMAS AND THE LIBERAL ORTHODOXY

(By Charles Krauthammer)

In retrospect, it is clear that the Bork Supreme Court nomination was the opening battle of the modern PC ("political correctness") wars. Remember: The charge against Bork by those who eventually voted him down was never "I don't agree with his political views." That, of course, was the essence of the opposition to Bork, but even his opponents maintained publicly that it is improper grounds on which to disqualify a Supreme Court nominee. (Whether or not it ought to be is another question.)

Instead, the charge against Bork was that he was not qualified to sit on the highest court. Not that he was intellectually unqualified—on that basis, he was then and remains now probably the most highly qualified jurist in the country—but "temperamentally" unfit. A new charge was minted that became the basis for his rejection by the Senate: he was "out of the mainstream," i.e., a political extremist unfit to hold high office.

The attack on Bork was the first live-fire exercise of that essential, now familiar PC weapon: stigmatizing as illegitimate those views (particularly views on race, gender and sexuality) that do not conform to current liberal orthodoxy. Dissenters are not just considered conservative, but out of the mainstream. Forty years ago, the word was un-American.

On a world scale, the tyranny to which such dissenters are subjected is fairly mild. You don't get put into the gulag. No one prevents you from going on the lecture circuit. You are a welcome guest on the chat shows. But you may not hold high office.

Even not so high office. Critic Carol Iannone was nominated last September to the advisory council of the National Endowment for the Humanities. For months now she has been the subject of intenss attack by the politically correct literary establishment (the Modern Language Association, PEN, American Council of Learned Societies etc.). Here again, those trying to block her nomination don't say they object because she is politically conservative and writes articles with which they disagree in places like Commentary. They say she is unqualified.

The basis of her unqualification? The charge that she does not have the requisite academic credentials is a phony. She holds a PhD in literature and has taught it for 20 years. She is a full-time faculty member at New York University. Her real offense is having written that several books authored by blacks have been honored with awards not on merit but has a form of literary reparation.

The issue at stake in the Iannone nomination is whether it will be impermissible in this country to say such a thing. Rejection would mean that the public discussion of racial bias will be regulated by the liberal establishment. The public discussion of discrimination against minorities is highly encouraged. The discussion of discrimination in favor of minorities is highly dangerous: It may be deemed such an act of deviance as to render the discussant unfit for public office.

Now, however, yet another fight in the PC wars is looming, and if the Bork nomination

was Fort Sumter this one looks to be Gettysburg. The nomination of Clarence Thomas to the Supreme Court may turn out to be a decisive battle over whether certain conservative views will continue to be delegitimized as outside the American mainstream.

That is why one sense a certain agitation and uneasiness among the forces now mobilizing against Thomas. Defeating the Bork nomination whetted their appetite and gave them a sense of their own strength. But the growing popular backlash against PC has made them doubt whether they can hold on to their gains. The Thomas nomination will be the rest. The real issue in the Thomas nomination is whether a black who is conservative can be part of the American mainstream.

Thomas opposes racial preferences for groups (Though as Juan Williams pointed out in an insightful 1987 profile in The Atlantic, he strongly favors remedial action for individual cases of discrimination.) He is therefore said to be agsinst civil rights. But it is a travesty to call someone like Thomas, who believes in colorblindness (which is what Hubert Humphrey, Martin Luther King, Jr. and most Americans believe in), an opponent of civil rights.

The other line of attack on Thomas will be abortion. Thomas has been less outspoken on the issue, but the suspicion is that he would overturn *Roe v. Wade*. The country is deeply divided on abortion, and even some supporters of legalization (like me) think *Roe* was gross judicial usurpation. Yet Thomas's adversaries will try to paint his views on abortion as out of the mainstream.

Roe has far more popular support in the country than racial preferences. That is why Thomas's opponents would prefer to wage their campaign by focusing on abortion and other "privacy rights." They would prefer to duck a fight on racial preferences because it could turn politically disastrous for Democrats. They are terrified on the "quota party" label.

Yet in the end it will be so important to liberals to bring down Thomas that I suspect we will see even this kind of Pickett's charge in favor of racial preferences. Thomas is a living threat. His confirmation would rspeal the current official recognition of the civil rights establishment as the sole legitimate representative of black psople in America. It would symbolically affirm that black conservatism is a respected and respectable current of the American mainstream. Most important, it would mean that, black or white, rich or poor, even the politically incorrect can aspire to serve on the highest court in the land.

[From the Legal Times, July 15, 1991]

A PORTRAIT OF THOMAS AT YALE: PERCEPTIONS OF SUPREME COURT NOMINEE ALWAYS AFFECTED BY RACIAL ASSUMPTIONS

(By Carole Bass)

He was a black nationalist. No, he was part of the liberal mainstream.

He went to class in overalls, combat boots, and a wool hat. No, it was a floppy-brimmed denim rain hat.

Well, at any rate, his attire was a political statement. No, a fashion statement. No, a way of saving money on clothes.

He hung a Confederate flag on the wall in his New Haven apartment. Alongside it hung a Pan-African flag. The juxtaposition represented a political statement. No, an absurdist joke. No, an effort to spark debate.

Meet Clarence Thomas, Yale Law School, Class of 1974. Or at least meet some of the perceptions of him.

In the wake of the federal appellate judge's nomination to the U.S. Supreme Court, pundits and political interest groups sift through the entrails of his formative experiences, searching for clues to his character and beliefs. As Thomas' classmates and professors dredge their memories, exaggerated significance attaches itself to tiny details to dismiss the details as overinterpreted elements of a myth in the making. But the little things do matter—not so much in themselves as for what they reveal about people's perceptions of Thomas.

The 43-year-old D.C. Circuit has said that people's assumptions about him as a black man, and his own reaction to those assumptions, helped shape his controversial views on racism and its remedies. His belief that blacks should help themselves rather than relying on government programs, for example, springs only partly from Thomas' personal experience rising from poverty. It's also a response to the stereotypes that assume that African-Americans are either victims of white society, if they're poor, or natural allies of white liberalism, if they're upwardly mobile.

Thomas's life journey—from severe poverty and segregation, through the Ivy League, to top appointments by Presidents Ronald Reagan and George Bush—has already taken on a fabled quality, making him a lightning rod in the raging storm over race, opportunity, and personal responsibility.

Twenty years ago, Thomas was a left-liberal black student at an overwhelmingly white law school, putting in time at the New Haven Legal Assistance Association, pegged by his race and dress as having certain opinions and interests. By the time he graduated, he was beginning to question some of the civil-rights orthodoxy. Now, he's an aggressively conservative judge, adored by the right as a genuine black conservative and reviled by liberals for his apostasy.

All along the way, Thomas has remained acutely aware of the racial filters through which he's perceived: not as a law student but as a black law student, not as a judge but as a conservative black judge. He has constantly rejected those assumptions, struggling to carve out his own definition of Clarence Thomas.

Yet at least until his confirmation hearings in the fall, the man who has spent his life trying to forge his own image must leave the business of defining Clarence Thomas to others.

THE CLOTHES LINE

Some of those doing the defining are relying on 20-year-old Yale Law School memories, which can be confused and contradiotory. A case in point is the way Thomas customarily dressed: bib overalls, black combat boots, and a hat.

"He dressed like a poor Southerner, not the way poor people in New Haven dressed," says retired Yale Professor Quintin Johnstone, who taught Thomas in three classes. Although he doesn't recall Thomas' overalls, Johnstone emphatically remembers him wearing a wool hat in class, which Johnstone interpreted as a "symbolic identification" with Thomas' roots in rural Georgia: 'Here's a fellow who comes from a poor rural source, and by God, he was going to let people know it."

Harry Singleton, a classmate and close friend of Thomas', snorts derisively when told of Johnstone's interpretation. "Firet of all, Clarence never wore a wool hat. I wore a wool hat sometimes, but his trademark was a denim rain hat," says Singleton, now a solo practitioner in Washington, D.C Thomas' wardrobe had more to do with style than politics. Singleton insists. "The preference for that style was that it was non-traditional—it was independent. That's what Clarence Thomas was all about: He's very independent."

When pressed, Singleton admits that his and Thomas' predilistion for overalls was meant to express "solidarity with the little man out there."

"We weren't elitist," Singleton says.

That's not so far from Johnstone's exegesis, perhaps—but a world of nuance separates Singleton's perception from that of the professor who couldn't remember which student wore the wool hat.

Another law-school friend offers a third explanation.

"I've read these interpretations of his overalls as being a statement. I think they were indicative of a meager pocketbook," says Lovida Coleman Jr.

"I think Clarence even said something to that effect—that they were inexpensive clothing," adds Coleman, who is now a partner in the D.C. office of Philadelphia's Dilworth, Paxson, Kalish & Kauffman.

Thomas' flag collection causes similar confusion. Recent newspaper articles have mentioned the Confederate flag he hung behind his desk in the Missouri attorney general's office, where he sought cases other than those involving civil rights. The articles suggest that the flag's purpose was to put coworkers on notice that Thomas, who was then turning to the right politically, was not the stereotypically liberal black man they might expect.

But Thomas displayed the same flag as a generally liberal law student, his friends say. Next to it hung a Pan-African flag. What did people make of that combination then?

"Nothing," responds Singleton. "I saw it as a shocker, a means of engaging people in debate: 'Why do you have that on your wall?' 'Why not?'"

Rufus Cormier, Class of '73, gave the flags even less thought than that. "Behavior that might be questioned today wasn't then," says Cormier, now a partner in Houston's Baker & Botts. "I find it hard to believe he intended it to be taken seriously."

While they may differ on the meaning of external symbols, the perceptions of Thomas' classmates and professors converage when it comes to his personality. As a law student, he was articulate, gregarious, exuberant, athletic.

After snagging a touchdown pass from Thomas, "I felt as though the football was permanently embedded in my stomach," says Lovida Coleman. "I give him credit for throwing it to a woman. Most men wouldn't have." Nor did he ease up on the pass: "Clarence only has one speed."

An avid informal debater, he always argued his positions forcefully, although he was open to changing his mind. He liked to act as a catalyst, often launching a debate by doing or saying something unexpected. Hence Rufus Cormier's explanation of the Confederate and Pan-African flags: "Clarence just has a sense of the outrageous."

And a sense of irony, something that surely came in handy for a poor African-American student in a bastion of WASP elitism. Thomas, according to his friends, was keenly aware of being different from virtually all his peers. By all accounts, his being different didn't make him uncomfortable with people from more traditional Yale backgrounds. But it did draw him closer to Singleton, whose father was a janitor, and to Frank

Washington, who was the first in his extended family to go to college, let alone law school.

"Unlike most people at Yale Law School"—including the otber black students—"we knew what it was like to have to climb out of a hole," Washington remarks.

Even as his race and poverty molded his identity, however, Thomas refused to be pigeonholed as a "black lawyer" or a "poor people's lawyer." Singleton remembers plenty of discussions about how to avoid being "shunted into areas that were considered 'black' law."

"The notion of trying to label Clarence is wildly amusing to me," says Washington, a former Carter administration official who's now a cable-TV executive in Sacramento, Calif. "He's somebody who took a great deal of pride in defining himself."

In that process of self-definition, Yale Law School was apparently not a crucible of dramatic political or intellectual transformation. Rather, it marked a time of transition for Thomas—from campus activism to intense legal study, from the Black Panthers to black-letter law courses. He started a family, played a lot of football, and worked very, very hard.

As an undergraduate at Holy Cross College in Massaohusetts, Thomas helped establish the school's Black Student Union and took part in demonstrations. "That's where I started to get political and radical," he told writer Dinesh D'Souza in an interview published on the opinion page of the Wall Street Journal. "I read Malcolm X. I became interested in the Black Panthers."

Yet when he came to New Haven in the fall of 1971—little more than a year after the city and Yale were convulsed by protests surrounding the murder trial of Bobby Seale and eight other Panthers—that radical activism seemed to dissipate. "A lot of that had blown over," Frank Washington recalls. "Everybody was taking a breath, focusing on learning to be lawyers."

"When you got to law school, it was serious business, trying to get ready to go out into the world," adds Harry Singleton. The students were so focused on their course work that Singleton, himself a former undergraduate activist, remembers little about the activities of the black law student association, even though he chaired the group.

On top of that general quiescence at the law school came the birth of Thomas' son, Jamal, further concentrating his attention on studies and family obligations.

Not that he lost interest in political or racial issues. Then, as now, affffirmative action was a hot topic, and several of those who knew Thomas remember his participating in the black law student association's efforts to get Yale to recruit qualified black students and professors.

Overall, Thomas' political views were pretty much in the law school's liberal mainstream, according to those who knew him then.

"I just don't recall Clarence standing out very much other than in terms of style," says Rufus Cormier. "He stood out because he was much more outspoken."

But generally liberal didn't mean singularly liberal. Thomas' friends say. He fervently believed in self-reliance and individnal responsibility, a legacy of his strict upbringing by old-fashioned grandparents and Catholic nuns. Especially on questions of poverty, he parted company with traditional liberal thinking. By Singleton's account, the two shared the view that while some people needed welfare, too many were "ripping off the government" and should take care of themselves. "There's no mythical man forcing you to put drugs in your veins," Singleton says, describing their common opinion at the time. "There's nobody making you have babies that you can't take oare of."

That's the kind of talk that, coming from Thomas' mouth in recent years, has earned him the hatred of liberals. But Singleton was the first to plunge into conservatism's uncharted waters, under the tutelage of Yale Law Professor Ralph Winter Jr. (now a judge on the U.S. Court of Appeals for the 2nd Circuit). Singleton began to talk to Thomas about his new, conservative ideas; Thomas "agreed with some and disagreed with others," Singleton says. By their third year in law school, Thomas started to take his friend's ideas more seriously, Singleton says. "But it was after he went to Missouri that he really spent a lot of time thinking about these things."

INTO THE LION'S DEN

The two continued their political dialogue while Thomas worked for Republican John Danforth, first in the Missouri attorney general's office and later in the U.S. Senate. Then Thomas—having caught the eye of the Reagan administration as an outepoken black conservative—finally abandoned his resistance to doing race-related legal work. He became assistant secretary for civil rights at the U.S. Department of Education—in an administration extraordinarily hostile to civil righte. When he left in 1982 to become chairman of the federal Equal Employment Opportunity Commission, he persuaded Singleton to take over the Education Department job.

"Doing civil-righte work in the Reagan administration was no cakewalk," Singleton recalls. "We were constantly being vilified. People don't understand that it's a chain of command. You follow orders or you're fired. So you try to moderate" the policies of higher-ups.

In other words, Singleton maintains, the perception of Thomas as an anti-civil rights villain is merely that: perception. When it comes to civil rights, Singleton and othere who knew Thomas in law school insist that the Supreme Court nominee may surprise some people. He came to his conservative views through his own experience, not because they fit a preconceived ideology, they say.

"This fellow is someone who's changed, adapted as he's moved through society, and we may find that he continues to grow and change mroe than other judges," observes retired Professor Quintin Johnstone. "For one thing, he's younger. And he's oome a long, long way. He's had to adapt."

Thomas gained plenty of notoriety as a conservative black civil-rights official. As a more or less liberal law student, he escaped such attention. Many of the law-school classmates and professors contacted for this article remember Thomas vaguely or not at all.

He made even less of a splash at the New Haven Legal Assistance Association (LAA), where he worked in 1971 and 1972. Of 10 attorneys contacted who were at LAA at the time, only one remembers Thomas.

"He was a quick learner," recalls Frank Cochran, who was managing attorney at the samll, neighborhood office where Thomas was a work-study student. "He was very well-organized and the kind of person that you were able to trust to do the work well."

Cochran, now a name partner with New Haven's Cooper, Whitney, Cochran & Francois, doesn't recall anything about Thomas' political views. But he does offer some insight into his own political thinking at the time, as shaped by his work in a neighborhood legal-service office.

"You see that poor people aren't a mass, and they're not principally definable in terms of their race," Cochran notes. While he hasn't turned conservative, Cochran says, "One of things you can come out of this with is a realization of just how individualized these cases are—and a mistrust of people who speak in generalizations."

While Thomas was certainly exposed to the reality of poverty before working at LAA, Cochran speculates that the legal services experience may have modified the student's ideas about the law as a political instrument. "I found a real decline in my feeling that the practice of law was going to cause social change," Cochran says. "It was becoming apparent that it wasn't—I was simply serving the legal needs of individuals."

Not all of Cochran's ex-LAA compatriots are as sympathetic to the change in Thomas' political views. They may not remember Thomas, but that doesn't stop them from offering unsolicited comments about the nominee.

"I'm sorry I can't give you any damning facte," says New Haven lawyer and former Rep. Bruce Morrison (D-Conn.), who recently lost a gubernatorial bid. "Politically, I'd like to drop a bomb on the guy."

Adds Penn Rhodeen, another New Haven practitioner and an LAA alumnus: "Thomas' nomination is a sadistic insult—to [Thurgood] Marehall, to blackness, to the idea of black judges."

Morrison and Rhodsen, like many other white liberals, are reacting to their perception of Clarence Thomas—as an affront to the ideals they've worked so hard to uphold. Morrison, for instance, devoted more than a decade of his life to LAA. He worked there 80 hours a week as a Yale Law School students, then joined the staff in 1973, eventually heading the agency and leaving only to make a successful run for Congress in 1982.

It's no surprise that such a hard-working crusader would take exception to Thomas' opposition to affirmative-action quotas and timetables, to his contemptuous dismissal of pay equity for women as a "Loony Tunes idea," and to his possible opposition to abortion.

But Thomas' puhlic record alone can't explain the outrage with which many liberals, especially whites, have greeted the judge's nomination. Declarations like Rhodeen's, in which he purports to define the acceptable limite of "blackness" and black judges, have less to do with policy than with whits people's perceptions of the proper role of African-Americans.

Black conservatives and radicals alike often complain that white liberals act as if they have a moral claim on the minds, if not the souls, of black folks. That's precisely the kind of racial assumption that Clarence Thomas—undergraduate radical, law-school liberal, or circuit court conservative—says he can't abide.

[From the Wall Street Journal, July 17, 1991]

BORKING BEGINS, BUT MUDBALLS BOUNCE OFF JUDGE THOMAS

(By L. Gordon Crovitz)

"Among the inadvertent benefits which followed from the timing of the Bork nomination was the coincidence of the regularly scheduled July annual meetings of mass membership organizations, including Planned Parenthood, the NAACP, the National Education Association, the National Organization for Women and the National

Abortion Rights Action League. These were followed by the August conventions of the Southern Christian Leadership Conference and the national board meetings of Common Cause, the AFL-CIO and the ACLU."

This reminiscence is from "The People Rising," a book celebrating how special interest groups defeated Robert Bork's nomination. This past July 1, four years to the day after the Bork nomination, many of the same groups went into high gear when President Bush nominated another conservative. Will Clarence Thomas also die the death of a thousand interest groups?

"We're going to Bork him," Florence Kennedy said of NOW's game plan. "We're going to kill him politically. . . . This little creep, where did he come from?" The script calls for throwing up endless smears; if there's enough smoke, there's an excuse. Recall how Alabama Sen. Howell Heflin explained that he voted against Mr. Bork because "He had a strange lifestyle." Senators representing the liberal plantation must see a conservative black as the very definition of a strange lifestyle. The attempted smears so far:

He's Catholic. Judge Thomas's Catholic upbringing is code for the assumption that he finds no constitutional right to abortion. The abortion issue has already returned to the state legislatures following the Webster decision but, fresh from his grudge match with Chuck Robb, Virginia Gov. Douglas Wilder asked, "How much allegiance does [Judge Thomas] have to the pope?" The John Kennedy precedent aside, the Constitution says "no religious test shall ever be required as a qualification to any office." This nonissue may be moot. Judge Thomas attends the Truro Episcopal Church in Virginia.

He's Not Black. Derrick Bell, a Harvard law professor, declared that Judge Thomas "doesn't think like a black." Columnist Carl Rowan said, "If you gave Clarence Thomas a little flour on his face, you'd think you had David Duke talking." Ugly, but nothing new. "Here's a strange black," Judge Thomas says about how people see black conservatives. "Let's go see if he has two heads and a tail."

He Is Black. When Sen. George Mitchell declared that Judge Thomas was nominated only because of his race, President Bush wondered if he "Acoused Lyndon Johnson of a quota" for nominating Thurgood Marshall. On what grounds is Judge Thomas unqualified? He has written more law review articles than David Souter, has more law-enforcement experience than Justice Marshall and his years at Monsanto would make him the only justice with experience working as a corporation lawyer. Admittedly, there is a single most-qualified nominee; maybe President Bush should send up Robert Bork's name if Judge Thomas is defeated.

He's an Affirmative Action Ingrate. Judge Thomas represents a generation of minorities who have felt both sides of the affirmative-action sword. At Yale Law School, he sat in the back of classrooms in the hope that professors would not notice his race and assume he was less qualified. One of his happiest experiences at Yale was when he went to pick up his blindly graded final exam in tax law. The secretary handed him a copy of the best exam while she looked for his. He was thrilled to see that the model exam was his.

He ran into a double standard when law firms recruited him. Instead of discussing his favorite legal subjects—tax and corporate law—lawyers would only tell him about their minority hiring and public-intsrest work. This is why Judge Thomas instead became assistant attorney general in Missouri under John Danforth, who agreed to treat him like anyone else.

Only Liberals Can Cite Natural Rights. The hypocrisy award goes to Harvard's Laurence Tribe. After a career of urging liberal judges to look beyond the Constitution, he criticized Judge Thomas for writing about natural rights, which he hasn't invoked as a judge. He had a narrow purpose for thinking about natural rights when he ran the Equal Employment Opportunity Commission. This is what he thought Brown v. Board of Education did not go far enough because it relied on sociological evidence more than legal priniciple to overrule the separate-but-equal doctrine.

Judge Thomas wrote that a more enduring opinion would have reflected the original intent of the post-Civil War amendments, which fulfilled the promise of equal rights in the Declaration of Independence. *Brown*, he said, was a "missed opportunity . . . to turn policy toward reason rather than sentiment, toward justice rather than sensitivity, toward freedom rather than dependence—in other words, toward the spirit of the Founding." A close underetanding of the Founders' background in natural-rights theory is important in interpreting the original intent of the document they left behind.

He's an Anti-Semite. Critics dug out a 1983 speech where he praised Louis Farrahkan's message of self-help for blacks. Once Mr. Farrahkan's anti-semitism became widely known, Judge Thomas gave speeches criticizing him—more than Rep. Gus Savage and others in the Black Caucus can say. Mr. Thomas internationalized the EEOC by demanding rights for Soviet Jews. He was also the 1986 winner of the Humanitarian Award from the Union of Orthodox Jewish Congregations of America, recognized for his "commitment to the right of all Americans to live free from discrimination based on race, religion or national origin and your support for the rights of Sabbath observers."

He Has a Weird Personal Life. There was a leak about Judge Thomas using marijuana in college, which he disclosed when he was appointed to the appeals court. Then there were reports that Mr. Thomas and his first wife had a bitter divorce. His former father-in-law said the two "were congenial and have remained so," telling the Boston Herald that "I'm very proud of Clarence, my whole family is." It's been reported that Judge Thomas hung a Confederate flag in his Missouri office, but the flag was the Georgia State flag, which Judge Thomas displayed in mischievous patriotism for his home state. Perhaps trying to repeat the infamous scoop of the videotapes Mr. Bork had rented, reporters perused the books Judge Thomas stores in his garage. They found such lascivious material as books by Ayn Rand, Alexander Solzhenitsyn and Alexander Pope.

These mudballs have not stuck, but the interest groups know they have until the September hearings. Judge Thomas and the country deserve a debate on the Constitution, original-intent jurisprudence and judicial restraint. Instead, we will get endless smears that liberals hope will postpone their greatest fear—a conservative black justice who will help legitimize a competing social and legal view.

[From the Washington Post, July 17, 1991]

NUNN SUPPORTS THOMAS FOR HIGH COURT

(By Ronald A. Taylor)

The Supreme Court nomination of Judge Clarence Thomas was boosted yesterday by the endorsement of a powerful senator from the Deep South.

The qualified endorsement by Sen. Sam Nunn, Georgia Democrat, makes the effort to revive the Senate coalition that defeated Robert Bork's high-court nomination in 1987 even more difficult for opponente of Judge Thomas, acoording to congressional sources.

Meanwhile, supporters and detractors of the black judge continued their efforts to influence public sentiment about the nominee as confirmation hearings approach.

A group of black Republicans raised images of a century-old debate within their community over self-help as it announoed plans for a national campaign to orchestrate black support for Judge Thomas, a member of the U.S. Court of Appeals for the District of Columbia.

Among his critics, however, three House Democrats questioned the nominee's judicial qualifications and anti-discrimination commitment.

Mr. Nunn said he will join Sen. John C. Danforth, Missouri Republican, in introducing Judge Thomas, a fellow Georgian, at the confirmation hearings before the Senate Judiciary Committee later this summer. Mr. Nunn said "my strong inolination will be to support him."

"We did not go into everything that they will go into in the hearings, but my intention right now is to support him," Mr. Nunn said after a get-acqualnted chat on Capitol Hill with President Bush's choice to replace retiring Justice Thurgood Marshall.

In their discussion, Mr. Nunn said, Judge Thomas drew the distinction "between affirmative action, which he supports, and the affirmative action quota type that he doesn't support. I think that is an interesting philosophical question."

Mr. Nunn added, "My own feeling is that Clarence comes from a background of a segregated society, and I think over a period of his time, if he is on the court, he will be very sensitive to discrimination."

Mr. Nunn, a lawyer and powerful chairman of the Senate Armed Services Committee, said Judge Thomas' "overall approach is very similar to the one I have, and that is the fact that someone in a racial group does not per se deserve special consideration because he's a member of a race."

Mr. Nunn said he was satisfied that Judge Thomas' professed admiration for Nation of Islam leader Louis Farrakhan was limited to the controversial black nationalist's assertions for black self-help as a vehicle for economic development and parity and did not extend to Mr. Farrakhan's criticism of Jews and Judaism.

"I talked to him about that and it is clear that at the time he made those statements . . . [he] didn't even know him, never met him, doesn't have any relationehip with him," Mr. Nunn said.

The three House Democrats who announced their opposition include an announced candidate for one of California's Senate seats, the chairman of a House committee on aging and a black memher of the Georgia delegation who is a battle-scarred veteran of one of the civil righte movement's most dramatic periods.

Reps. Edward R. Roybal and Barbara Boxer, both of California, and John Lewis of Georgia "stand before you symbolic of many of the people whom President Bush's nominee to the Supreme Court has hurt in his career," Ms. Boxer said.

Mr. Roybal, chairman of the Select Committee on Aging, singled out Judge Thomas' record on age discrimination when he served

as chairman of the Equal Employment Opportunity Commission.

He said that up to 13,873 age discrimination charges were dismissed by the EEOC between April 1988 and June 1990. He labeled that an example of the Thomas-directed EEOC's "disregard for laws protecting the rights of those who are among this society's most disadvantaged and vulnerable citizens."

Such statistics "should disqualify Judge Thomas to sit on this nation's highest court," he said.

Mrs. Boxer pointed out that Judge Thomas "hurt women by refusing to act on 60 [EEOC] complaints involving fetal protection policies that discriminate against women and, more important, by forcing women to accept a tougher, unrealistic standard of gender-based wage discrimination than the previous standard."

"I find Clarence Thomas to be a hard-working, articulate and likeable individual," said Mr. Lewis, who still bears the scars of police beatings from civil rights marches in the 1960s.

"You don't need long, drawn-out studies. We know this man's record. I met the man. I'm from Georgia. He's from Georgia. I know him," Mr. Lewis said, adding that the judge's record has been insensitive to the disadvantaged.

"I am opposing his nomination because he has demonstrated his willingness to deny others the means and tools to which he has had access," he said.

But Judge Thomas drew unqualified praise from the Council of 100, a group of black Republicans who said yesterday that they will launch a nationwide campaign to win black support for the man they urged Mr. Bush to nominate for the high court.

"We want first of all to get the truth and the facts to all African-American organizations about Clarence Thomas," said Milton Binns, council chairman.

He noted that the full story on Judge Thomas includes his little-known role as EEOC chief to engineer a plan to raise money for historically black colleges and universities from corporations.

The black Republicans said they want to counter the efforts of liberal Democrats to discredit Judge Thomas.

Harry Singleton, a Yale classmate of Judge Thomas', said the anti-Thomas campaign of white liberals is a "blatant political move."

"How could they come and beat up on a black without securing support in the black community first?" he asked.

[From the Washington Post, July 17, 1991]

TALKING WITH THOMAS FOR 10 YEARS

(Constance Berry Newman)

In nominating Judge Clarence Thomas to serve as associate justice of the U.S. Supreme Court, President Bush has chosen an individual who has both the intellect and the intsllectual honesty for the job. He nominated a person who will be fair and sensitive to the struggles of all Americans—black, brown, white, red and yellow.

Judge Thomas would not let people's religion or station in life affect the way they thought about their rights. He has a special understanding of those poor striving for political and economic empowerment.

And he is willing to listen to others with whom he is not supposed to agree. I know. I am one of those people. For almost a decade Judge Thomas and I have discussed many issues, but most often our discussions were about inequities in this nation and approaches to ensuring equal opportunity for all. We agreed, we disagreed, and we have both changed our minds some.

The discussion and the debate about Judge Thomas' qualifications are confusing, and not all who have participated have been fair. What disturbs me is that much of the discussion is not even relevant. In order to be fair and relevant we must ask, What does the Constitution require? Article II, Section 2, provides that the president by and with the advice and consent of the Senate shall appoint judges of the Supreme Court. The Constitution does not set specific requirements such as an examination or even citizenship. It is up to the advise-and-consent process to determine the qualifications.

Through the years the questions asked the nominees have changed because the issues have changed. What has not changed significantly are the basic value judgments made about the nominees. I will set out what I believe to be the most important of those values.

It is important that a justice of the U.S. Supreme Court be competent. Even though the Constitution does not require that they be lawyers, all 105 justices have had legal training, with more than half having served on the bench. The American Bar Association has had uneven influence in the process through various administrations, looking at such factors as judicial temperament, character, intelligence and trial experience.

I will not second-guess the ABA. However with regard to Judge Thomas's competence, fairness requires recognition of the following points: Judge Thomas graduated from Holy Cross College with honors and from Yale Law School. He was assistant attorney general of Missouri from 1974 to 1977. He was counsel to Monsanto Co. and legislative assistant to Sen. John Danforth. He has been confirmed by the Senate on four separate occasions. The most relevant confirmation was in 1989 as a U.S. Court of Appeals Judge for the District of Columbia. Since confirmation he has participated in more than 140 decisions.

A justice of the court must have an open, inquiring mind—a willingness to listen and be sensitive to the struggles evidenced by the issues before the court. At the time of confirmation, the Senate cannot know of the issues the justice will face. What is important is that the nominees have no preconceived notions of how they will decide specific cases. They must be prepared to review complicated briefs with an open mind and to listen to the arguments, inquiring and then deciding.

When Earl Warren was nominated to be chief justice in 1953, there should not have been and was not a way for the Senate to know how he would decide the landmark case *Brown* v. *Board of Education* in 1954. It was important to the Senate that Warren be competent and fair, inquiring about the struggles evidenced by the issues in the case. And he was just that. We would have that in Judge Thomas, an independent thinker who is fair and who will listen. Judge Thomas has read and quoted many people of varying points of view. That type of inquiring mind is needed on the court.

A justice of the court must have integrity, particularly intellectual honesty. We entrust a great deal to the nine on the Snpreme Court. They must honestly call the cases as they see them. An independent thinker, Judge Thomas will have no problem adapting to the culture of the Supreme Court.

I trust the president's judgment in nominating Judge Thomas, but I can go further. After almost 10 years of discussion with him, I am comfortable with the idea that he will be one of the nine people deciding the issues that come before the Supreme Court during my lifetime and afterward.

[From the St. Louis Post-Dispatch, July 17, 1991]

CLARENCE THOMAS DIDN'T BLAME SOCIETY

(By Richard B. McKenzie)

Supreme Court nominee Clarence Thomas has had a remarkable impact on Washington policy discussion. His background and personal philosophy of life have directed attention to a source for policy guidance rarely considered in the nation's capital: commonsense rules for personal conduct.

Washington's policy-makers and pundits are in the business of produoing government policies that will "get the country moving again" or "make American industry competitive" or "lift disadvantaged groups by their economic bootstraps." And they produce a lot of policy recommendations, mostly to no avail and for good reason.

The recommended policies tend to be grand schemes that involve spending tens of billions of dollars over long periods of time, redirecting monetary or fiscal policies and creating a labyrinth of national education policies or industrial policies. The recommended policies are typically complex, expensive and highly contentious, frequently founded on arcane theories of social and economic behavior. Nonetheless, when adopted, the policy changes typically have precious little positive impact on the future course of the econony.

However, most Americans, even some of the least educated and least worldly, don't have to be told what is needed to get the country moving again or to make it competitive or to lift people by their bootstraps. They know that Clarence Thomas showed great wisdom when he bluntly acknowledged, "As a people, we need to find solutions to problems through independence, perseverance and integrity," a simple perspective he attributed not to people in high places in Washington but to the people back home in Georgia, his grandparents, mother and the nuns who taught him in school.

The economic changes the country needs go by the rubric of common sense and are applicable to Americans individually, not to the whole country. To accomplish the good things that the policymakers and pundits want, all people have to do is follow a few basic rules:

Study hard in school, which requires that the first goal is to learn the material and the second is to get good grades.

Be responsible, which means meeting deadlines as well as accepting the costs for wrong choices.

Work diligently; offer more than a day's labor for a day's pay.

Be considerate to others.

Deny temptations to splurge and save for the expected rainy days and the bad things that will happen to everyone.

Give of oneself, especially to one's own children who are most in need of direction, reminding them of the commonsense rules of success.

Make the family and a few close friends the building blocks of all else that happens in life.

Just make the effort, take a few risks and when things don't work out, go back and try again, hut learn from the experience.

Our political leaders rarely ever oite such rules as a source for economic prosperity and growth. They, and the news media, prefer to cite relentlessly people's social circumstances or the Japanese or the rich as the causes of the country's economic failures.

Society, we are told repeatedly, is the villain and responsible for practically everything wrong with individuals or the country. Hence, the advice given is that society must rectify the problem, not realizing that to blame society is to blame everyone, which is tantamount to diffusing responsibility so thinly that no one is effectively blamed.

Who among the readers doubts that the nation's economic difficulties can be attributed largely to the breakdown in people's allegiance to these common sense rules known by practically everyone? Who questions that their community and country would make a dramatic economic leap forward if people followed with greater dedication just half of the rules? Who doubts that much poverty would be relieved if many of the poor themselves studied harder, worked harder, saved more, took greater responsibility for their own lives and stopped trying to shift the blame to others?

In posing these questions in such stark terms, I can sense why politicians are uneasy with Thomas' life perspective or with anyone else who espouses common-sense rules for individual conduct as a source of a country's economic progress. Such rules leave little for politicians to do, and many voters may be made to feel uneasy, if not mad, when told that they themselves have a direct role and burden in contributing to their own economic welfare and to the economic health of the country.

It is so much easier for policymakers to call others to task for the country's economic failings and to pretend that calls for individual action and responsibility are meaningless.

In the end, the future of the American economy will, for the most part, be built not on venturesome government programs but rather on the resourcefulness and industriousness of its people, all doing, one by one, what they know they should be doing. It will depend also on more people who share Thomas' perspective being appointed or elected to high government offices.

[From the St. Louis Post-Dispatch, July 17, 1991]

NUNN LENDS SUPPORT TO THOMAS

(By Charlotte Grimes)

WASHINGTON.—Clarence Thomas won support for his nomination to the Supreme Court on Tuesday from an influential fellow Georgian, Sen. Sam Nunn.

After meeting with Thomas, Nunn said he would join Sen. John C. Danforth, R-Mo., in introducing Thomas, a U.S. appeals court judge, to the Senate Judiciary Committee when it opens confirmation hearings late this summer. Nunn said that "in all likelihood" he would vote to confirm Thomas.

In the rituals of the Senate, the introduction—or lack of it—by a senator with a connection to a nominee carries political weight as well as courtesy. Senators withhold it rarely—as a sign of extreme displeasure with a nominee. But extending the courtesy does not necessarily pledge a senator's vote.

An introduction by Nunn would have special meaning because of his status as a well-respected moderate Democrat and a power player in Senate politics as chairman of the Armed Services Committee.

Danforth, who is escorting Thomas on the courtesy calls to senators, went on the offensive Tuesday about Thomas' record as chairman of the Equal Employment Opportunity Commission between 1982 and 1990. In a Senate speech, Danforth said he had recently "walked the corridors" of the EEOC to ask employees about Thomas' tenure.

He cited comments from employees, ranging from the new EEOC chairman to a "maintenance man in green overalls," who universally praised Thomas for improving the agency's efficiency, for bringing it into the computer age and for dealing warmly with people. "The clear message from those I visited was that Clarence Thomas had transformed the EEOC from the dregs of the federal bureaucracy to an efficiently operating agency, which was effectively performing the duties Congress had assigned to it," Danforth said.

While being generally credited with making the agency more efficient, Thomas has come under fire for lapses in pursuing age discrimination complaints within a two-year limit.

Thomas originally told a congressional committee that only 70 cases had lapsed, but the number eventually was discovered to be more than 13,000.

That issue has irked advocacy groups for older Americans, and potential opposition from them hangs over Thomas' nomination.

Danforth said he had specifically inquired about age discrimination cases and been told that they "amounted to about 0.2 or 0.3 of 1 percent of the case load, that they never would have been discovered but for the computer program installed by Chairman Thomas, and that when Mr. Thomas heard that age discrimination cases had lapsed, he 'saw red.'"

Besides Nunn's gesture of support, Thomas picked up on Tuesday an endorsement from the Council of 100, an organization of black Republicans who want to counter the opposition to Thomas of the Congressional Black Caucus. The caucus, made up of 25 House Democrats and one Republican, voted last week to oppose Thomas' nomination.

"The Congressional Black Caucus does not speak for all African-Americans," said Milton Bins, chairman of the Council of 100.

From the St. Louis Post-Dispatch, July 18, 1991]

THOMAS' OPINIONS SHOW KEEN MIND

(By James Kilpatrick)

WASHINGTON.—Ever since his Supreme Court nomination, Clarence Thomas has been the talk of the town. Most of the talk has been political talk. The talk is of Thomas as a black. For a refreshing change, suppose we talk of Thomas as a judge.

The complaint is heard that Thomas is inexperienced—that he has served little more than a year as an appellate judge. By my count, 25 of the 48 justices who have come to the court since 1900 have arrived with little or no judicial experience. Some are well remembered, Louis Brandeis, Abe Fortas and Lewis Powell had no judicial experience at all. Hugo Black had none to speak of. Felix Frankfurter was a high-ranking bureaucrat. William O. Douglas was chairman of the Securities and Exchange Commission. Earl Warren had been governor of California. All of them left their mark.

There is good reason to believe that Thomas would leave his mark also. I venture that judgment after reading everything Thomas has written for the U.S. Court of Appeals for the District of Columbia. The corpus consists of 17 opinions for the court, one concurring opinion and one dissenting opinion. His writings addressed a nice variety of civil and criminal issues. They show considerable promise.

A Supreme Court nominee should show judicial restraint. We want judges who will seek to determine what the law is, and not what it ought to be. In one opinion after another, he sounds a theme of judicial restraint. In June of last year, Thomas wrote for the court in a case about a defendant convicted of possessing cocaine and of "using or carrying" a firearm. There is no evidence that the man carried a gun. The unloaded weapon was tucked into cushions of a sofa. Thomas was urged to give a liberal construction to the verb "use." He declined. "Use" he said, means use.

Perhaps the clearest exposition of his judicial philosophy came in a case appealed from the Interstate Commerce Commission. The case involved ferry service in Long Island Sound. A key question was whether the ICC's mandate to promote "efficient" transportation embraces a power to consider environmental impact. Two of Thomas' colleagues said yes. Thomas, dissenting, said no.

Should the ICC ponder the effects of its actions on the "increasingly fragile" watere of the Sound? Said Thomas. "I agree that as a matter of policy, it probably should. As a matter of law, however, the Commission has no power to regulate ferries for environmental reasons."

Turning to another aspect of the case, Thomas observed for the record that "federal courts are courts of limited jurisdiction." If jurisdiction does not exist, federal judges have no authority to exercise it, even if everyone wants the dispute resolved.

"The truistic constraint on the federal judicial power, then, is this. A federal court may not decide cases when it cannot decide cases, and must determine whether it can, before it may."

That sentence was packed as tightly as the inside of a walnut. It is a beautiful summation of a topic on which volumes have been written.

You will infer correctly that I like what I am learning about the gentleman. He is my kind of thinker and my kind of writer. He has an orderly and a reasoning mind.

[From the St. Louis Post-Dispatch, July 19, 1991]

QUOTA DEBATE SHOWS WE'RE ALL TWO-FACED

(By William Raspberry)

WASHINGTON.—It was with the air of a "gotcha" that Senate Majority Leader George Mitchell reacted to the Supreme Court nomination of Clarence Thomas. It is plain as day, said the Maine Democrat, that Thomas was nominated, at least in part, because he is black. And since the nomination came from a president who is a sworn enemy of quotas it exposes George Bush as two-faced on the subject.

Welcome to the club, Mr. President. When it comes to the legitimacy of race as a consideration in matters that ostensibly have nothing to do with race, maybe all of us are two-faced. I certainly am. Should race be a consideration for the Supreme Court? The answer strikes me as so obvious that I find it hard to take seriously those who don't see it my way. Of course it should be a factor. Not the only factor, not the overriding factor, but a factor.

The Supreme Court is not merely a collection of eminent legal historians charged, like Talmudists, with interpreting the Constitution in the light of their knowledge of the language (and the political and social history) of the times to arrive at the "original intent" of its framers. The court is also charged with adjudicating issues that the framers could not have had in mind.

Given that view of the court, it makes absolute sense that its membership reflect, at least in very general terms, the society in which it exists. I think Bush believes that,

but I also think that he imagines it somehow illegitimate to believe it—which is why he found it necessary to talk about Thomas as the "best" person for the seat being vacated by the retiring Thurgood Marshall.

It's hard for me to imagine a board or commission that wouldn't be strengthened by diversity in its membership. Zoning boards, transit authorities, health commissions, school boards, parole boards, fine arts commissions, beauty pageant panels, Pulitzer Prize boards—all have more legitimacy and strength if their memberehips are not limited to privileged white men.

The misgivings enter when diversity is confounded with legitimate competition. Many of us believe, for instance, that universities have a defensible interest in faculty and student body inclusiveness, and that they ought to revamp their recruiting strategies to make certain that the inclusiveness occurs. But we have trouble with the notion of bonus points based on race or ethnicity.

The more closely the selection criteria resemble a contest with explict rules and qualifications, the more troublesome the race- or gender-specific bonuses. Nor do you have to be a conservative to find the concept troubling. Mitchell, for instance, might agree as to the desirability of having all our major institutions—not just the Supreme Court—reflect the makeup of the population. He would, I imagine, welcome a trend that brought more minorities and women to the Senate. But he would not, I am certain, argue that a well-qualified black who comes close but fails to outpoll him in his next reelection bid should nevertheless be given the seat.

Does it follow that Mitchell is, as he said of Bush, "against quotas . . . for everyone except himself?"

Of course Bush is two-faced about quotas. At some level, we all are.

[From the Kansas City Call, July 19-25, 1991]

HOW CAN HE NOT BE SENSITIVE TO BLACK NEEDS?

Editor, The Call:

I agree with Carol Coe in my support of Clarence Thomas as nominee of President George Bush to tbe Supreme Court. First of all, we as black people must realize that George Bush would not have nominated a person preceived as being "liberal" regardless of their race, color or sex. My fellow African-Americans, that's a reality! Now that we have established that the nominee would likely be a person of moderate to conservative persuasion, why not Clarence Thomas?

We must underetand that no white person, or as far as that's concerned, no person period of any other color understands the struggles of black people as well as another black person who has experienced those struggles. Considering Clarence Thomas' background, how can he not be sensitive to black needs and concerns?

My background is somewhat similar to that of Clarence Thomas in that I grew up down South and was subjected to racial discrimination and prejudice, attended a segregated school, whites only water fountains, restrooms and the like. I am also a black moderate to conservative Republican state elected official that serves a constituency that is 98% white in Eastern Jackson County, Mo. Am I sensitive to black concerns? You Bet—State Rep. Carson Ross, Blue Springs, Mo.

WHO HAS WORKED HARDER?

Editor, The Call:

A black man, Clarence Thomas, descendant of persons brought to America and held in brutal slavery for two centuries, has been nominated to the Supreme Court by George Bush.

His views on civil rights, women's rights and rights of human beings are a disgrace to us as a people. Moreover, it is a betrayal of the legacy of struggle and righteousness left us by our descendants and ancestors.

Thomas did virtually nothing for minorities when he was head of the Equal Employment Opportunity Commission.

If hard work was the key, most, if not all African-Americans, would indeed be wealthy in the U.S.A. today.

If our ancestors did not work hard when first brought over to America, and still working hard, then I would like to know who has worked harder?

So, it is not about working hard. It is playing America's white supremacist game.

Clearly, Clarence Thomas has demonstrated no identification with African-Americans who are oppressed people. If it were not for luck and riding on the coattails of those that came before him, he would still be on the farm—Gloria Turley, Kansas City, Mo.

[From ths Atlanta Journal, July 19, 1991]

FOOLS OPPOSE AFFIRMATIVE ACTION; THOMAS IS NO FOOL

(By Jeff Dickerson)

Here's the rap among blacks against Clarence Thomas: He forgot where he came from. He's an uppity Negro who rose on affirmative action and now saws rungs off the same ladder.

One irate caller even said there's no way Thomas could have backed Louis Farrakhan's self-help because—get this—Thomas's wife is white. And columnist Carl Rowan said that with a little flour, Clarence Thomas could be David Duke.

So, once more, let's debunk some Clarence Thomas myths:

Thomas opposes affirmative action. Only a fool opposes affirmative action. Thomas proved he was no fool when he insisted that the New Orleans Police Department hire a black for every white until blacks were 50 percent of every rank. Thomas proved he was no fool when he compelled General Motors Corp. to set goals for hiring and promoting blacks, women and Hispanics.

Thomas was a good little Negro for the Reagan administration. Bull. Thomas publicly opposed Reagan for trying to give tax exemption to Bob Jones University. He told Edwin Meese and William Bradford Reynolds that they appeared to have "a negative rather than a positive agenda on civil rights." While employed by Reagan he told blacks: "There's nothing you can do to get past black skin. I don't care how educated you are, how good you are at what you do. You'll never have the same opportunities as whites." (Carl Rowan, have you heard David Duke say that?)

Thomas forgot where he came from. "There is a tendency among young, upwardly mobile, intelligent minorities to forget," Thomas wrote in an '85 speech. "We forget the sweat of our forefathers. We forget the blood of the marohers, the prayere and hops of our race." Clarence Thomas has not forgotten where he came from, though many of the silver-spoon blacks criticizing don't have a clue where he came from.

He has a white wife. So does Julian Bond.

One mors time: Clarence Thomas doesn't oppose affirmative action. He opposes complete and totai reliance on white beneficence. So should we all.

Blacks should shed the mindset that if we are not begging for white aid, jobs and "affirmative action," then we're stooges for "conservatives." Thomas simply doesn't expect a group of people who historically haven't helped us to magically turn around and start doing so.

Thomas knows that our successes have come by our own initiative: Rosa Parks did not beg for a seat on the bus; she took it. Alonzo Herndon did not beg for wealth; he seized it. But here stands our civil rights establishment, hat in hand, waiting for white folks to teach us, hire us, be nice to us.

We'll be waiting forever, says Clarence Thomas, and he does not want to wait.

[From the St. Louis Post-Dispatoh, July 21, 1991]

LIBERALS TURN COMIC IN OPPOSING THOMAS

(By Charles Krauthammer)

WASHINGTON.—The life of a columnist is a feast of ironies, but rarely is one served a meal quite as sumptuous as the one just cooked up by Laurence Tribe, Harvard Law School professor and leading liberal constitutional scholar. Tribe has taken to the New York Times to share with us his anxieties about Supreme Court nominee Clarence Thomas.

Thomas, it seems, is not a traditional conservative meaning a judicially restrained one who believes that a judge's job is to interpret the law, not make it. It seems that Thomas is a more radical kind of conservative. Instead of just sticking to the Constitution. Thomas believes in natural law as another source of rights beyond the Constitution. And, as a guide to understanding natural law, Thomas invokes the Declaration of Independence, which for example, speaks of life, liberty and the pursuit of happiness as inalienable rights.

Under such a natural rights theory, Tribe warns, a judge could ban everything from abortion counseling to anal sex to minimum wage laws. Nothing less than the "fate of self-government in the U.S." is threatened by Thomas judicial activism.

The first oddity of this critique is that today a traditional conservative seems to be a good conservative. Of course, the last time a principled judicial restraint conservative, Robert Bork, was nominated for the court, Tribe led the pack that savaged him. But never mind.

The greater curiosity is the charge of judicial activism. From Tribe, this is hilarious. Tribe is one of the great defenders of reading the Constitution, shall we say, expansively. When the liberal court of the '60s and '70s—that Edison of the rights industry—minted new rights, year in, year out, with Menlo Park efficiency, he applauded. When, for example, *Roe vs. Wade* purported to find the right to abortion in the Constitution—or, to be more precise, in the penumbral emanations of the Constitution—that was good law because it fit nicely with Tribe's view.

Now that liberals have lost control of the court, they are shocked—shocked—that judges might go beyond the letter of the Constitution and apply concepts like natural law through which *they* might legislate.

It gets funnier. Tribe's concern is that Thomas "might seek to replace *Roe* not with a system that strengthens states' rights," but one that denies the states' right to permit a legal abortion. Where was Tribe's concern for states' rights under *Roe*, which effectively deprived the 50 states of any say in the matter of abortion? For liberals now to champion the power of state legislatures—after having spent 40 years championing the right of the unelected judiciary to force states to raise taxes, reform prisons, bus

children, hire by race and permit abortion—is world-class chutzpah.

And what exactly is Thomas' offense? Every justice brings a certain intellectual structure and understanding of rights to his interpretation of the Constitution. Thomas is simply more ingenuous than most. He spells out what it is he appeals to—the classical tradition of natural law and the explicit words of the Declaration of Independence. The nation is far safer entrusting its future to such a justice than to the kind that pulls new rights out of a hat and declares them penumbral emanations.

[From The Wall Street Journal, July 22, 1991]

ASIDES

JUDGE THOMAS' RESTRAINT

More evidence is in that Justice Clarence Thomas would serve the Founding Fathers' intent that the judiciary serve as the last dangerous branch of government. A soldier, "John Doe," sued when the Pentagon innoculatsd the troops of Desert Storm with vaccines to fight possible Iraqi nerve gas attacks. This (naturally) first required a new Food and Drug Administration regulation because the medicines were not yet approved. The soldier sued aganst the FDA rule.

Ths federal appeals court in Washington last week upheld the FDA and the emergency vaccinations, but Judge Thomas wrote in a dissent that the court should simply have dismissed the lawsuit without further ado. "The war has ended and the troope are homs, hut to the majority this case lives on," Judge Thomas wrote. With no immediate possibility of administering the druge, the issue is moot and judges should not rule.

Mootness, along with the doctrines of standing and ripeness, is a key to judicial restraint. Courts should adjudicate real legal disputes, not write essays on pretend issues or policy matters. Whatever else, it seems, a Justice Thomas would not look for social issues to take out of the hands of the people.

[From Jet Magazine, July 22, 1991]

CLARENCE THOMAS RISES FROM POVERTY TO SUPREME COURT NOMINEE

For Clarence Thomas, it took 43 years to journey from the painful poverty in Pinpoint, GA., to the affluent home of President George Bush in Kennebunkport, Maine, in order to stand near the pinnacle of progress in the legal profession—a nomination to the U.S Supreme Court.

And when he stood alongside President Bush, who nominated him to succeed retiring Justice Thurgood Marshall on the nation's highest court, Thomas, who could become the second Black Supreme Court Justice in history if the nomination is confirmed by the U.S. Senate, was so overcome by the commingling of surprise and success that he could hardly maintain his composure.

"As a child, I could not dare dream that I would ever see the Supreme Court, not to mention be nominated to it," said Thomas, a U.S. Appeals Court judge for the District of Columbia Circuit, when he stepped up to the microphone after Bush introduced him at a press conference. "In my view, only in America could this have been possible," he declared as he stood there with a written statement held tightly in his hands.

Recalling his roots in segregated Savannah, GA., where he was reared by his maternal grandparents, Mr. and Mrs. Myers Anderson, the Supreme Court nominee became choked with emotion and struggled to read a brief statement. And in recounting a boyhood memory, he touched indirectly upon a link with Marshall, whose retirement from the court at age 83 created the vacancy that Thomas could fill.

"My most vivid childhood memory of the Supreme Court was the 'Impeach Earl Warren' signs which lined Highway 17 near Savannah. I didn't quite understand who this Earl Warren fellow was, but I knew he was in some kind of trouble," said Thomas.

Warren, a former governor of California who was appointed Chief Justice by then President Dwight David Eisenhower, had been under attack in the segregated South ever since he wrote the 1954 landmark opinion in the Brown v. Board of Education case that declared racial segregation in public school unconstitutional. Warren had been so thoroughly convinced by the effective arguments before the high court by then Howard University-trained civil rights lawyer Thurgood Marshall that Warren personally persuaded the other justices to make his majority opinion unanimous.

"I thank all of those who helped me along the way, and who have helped me to this point and this moment in my life, especially my grandparents, my mother and the nuns, all of whom were adamant that I grow up to make something of myself," Thomas added. He said he hoped to be "example to those who are where I was and to show them that, indeed, there is hope."

While Thomas grew up poor, Black and a Democrat, he later became a Republican whose controvereial views often revolved around his emphasis on Black self-help and opposition to "other raceconscious legal devices" that he says "further deepen the original problem."

In a speech titled, "Why Black Americans Should Look to Conservative Policies," Thomas said: "I was raised to survive under the totalitarianism of segregation, not only without the active assistance of government but with its active opposition."

The hope that he now offers all those who struggle to make something of themselves is his impressive story of the hope that enabled him to rise from poverty to Supreme Court nominee.

When Thomas was born in the segregated Southern port city, his mother, Mrs. Leola Williams, recalled what it was like.

"Where we came from, we didn't have nothing," she told USA Today. "We juet lived day by day. I picked crabs for a living to take care of him, and then my father and my mother stepped in to help us." His father deserted the family when Thomas was a toddler, leaving him and two other siblings to live with their mother and other family members in a wood-framed house with no running water and an outdoor toilet which his family shared with several neighbore on the same block. Food was not easy to get and he wore shoes only to school.

Now a nurse's assistant in Savannah (population: 145,000), Mrs. Williams says her son's nomination is vindication of hard work. "Nothing good comss easy Clarence knows that. He's lived it," she told the newspaper.

Thomas remembers vividly what it was like growing up with his grandparents who owned an ice delivery and fuel oil business. It was in this environment that Thomas recalls with a special pride. "My grandfather has been the greatest single influence on my life," he told Atlantic magazine in 1987. He said that his grandfather worked him six hours a day at the ice house and fuel station, in addition to school. Thomas, in a Wall Street Journal interview, said the other chores included raising the chickens, pigs and cows; cleaning the house and the yard; painting, roofing, plumbing and fixing; maintaining the oil trucks and making deliveries.

These lessons of hard work and self-reliance were reinforced throughout high school and college. His grandfather, who could not read, sent him to a Catholic school run by a group of White nuns that was estahlished for poor Black children and he later became one of the first Blacks at a previously all-white Catholic high school. Thomas was a high academic achiever and a good athlete. He also attended two different seminaries looking to enter the priesthood, hut left after hearing a fellow seminarian react to the shooting of Dr. Martin Luther King, Jr. hy saying, "Good, I hope the SOB dies."

That kind of racism stung him deeply and he later said in the Atlantic magazine in 1988, "There is nothing you can do to get past Black skin. I don't care how educated you are, how good you are at what you do. You'll never have the same contacts or opportunities."

While enrolled at Holy Cross College, Thomas, the first in his family to attend college, became an activist. "That's where I started to get political and radical," he told the Wall Street Journal. "I read Malcolm X. I became interested in the Black Panthers." He founded the Black Student Union at Holy Cross in 1971. At Yale University Law School, he said his political consciousness continued. It continued after graduating from Yale and becoming an assistant Attorney General for the state of Missouri under John Danforth.

When Danforth became a Missouri senator, Thomas joined the lawmaker as a legislative assistant in Washington. He rose quickly in the Reagan administration, working with the Office of Civil rights at the Department of Education and then serving as chairman of the Equal Employment Opportunity Commission (EEOC).

While at the EEOC, Thomas gave speeches accusing the Republican Party of "blatant indifference" toward Black voters and chastised President Reagan, in particular, for lettiug Bob Jones University get away with racial discrimination, and for "foot dragging" on the Voting Rights Act extension, the Wall Street Journal reported in an article (July 2, 1991) titled "Clarence Thomas On Law, Rights and Morality."

Two years ago, Thomas was appointed to the D.C. Court of Appeals, considered the second highest federal court, despite staunch opposition from traditional civil rights group. But a hush-hush death bed parley was a key factor in helping him overcome the opposition and could be the key factor in whether he gains civil rights backing.

When he faced stiff opposition for the federal judgeship, NAACP Washington Bureau director Althea T.L. Simmons agreed to meet with Thomas on the eve of the confirmation hearing. He traveled to the hospital to talk to one of the few persons in the entire Civil Rights Movement who would listen to his story. After a one-hour-and-a-half bedside meeting, he managed to impress Ms. Simmons, who urged her NAACP superiors to withdraw opposition against him for the post—but on the other hand, not support him. "He had not forgotten his roots or Black folk," Ms. Simmons latsr told Jet. "I gained a new meaning of Clarence Thomas and feel that he will help us. He's a very dedicated man." She died two months after he was confirmed and mounted the U.S. Court of Appeals bench. Ironically, the late Ms. Simmons and her bedside assessment of

Thomas may wind up a key character witness. It was her judgment that opened the gate for Judge Thomas to reach the high court nomination.

When the Senate confirmation hearings begin in September, among his allies will be two of his staunchest supporters in Washington: his second wife, Virginia Lamp Thomas, who is deputy assistant secretary of labor in the Labor Department's congressional-relations office, and his 18-year-old son, Jamal Adeen Thomas, from an earlier marriage.

Now on the threshold of achieving a post that not even he could dream about, Thomas says the nomination is just confirmation of the American Dream that his grandfather instilled in him before he died in 1988.

"I have felt the pain of racism as much as anyone else," Judge Thomas said recently in a speech. "Yet, I am wild about the Constitution and about the Declaration. Abraham Lincoln once said that the American founders declared the right of equality whose enforcement would follow as soon as circumstances permitted. The more I learn about the ideas of those men, the more enthusiastic I get . . . I believe in the American proposition, the American dream, because I've seen it in my own life."

BUSH TELLS WHY HE PICKED THOMAS FOR SUPREME COURT

During a press conference at his home in Kennebunkport, Maine, President George Bush said he nominated Judge Clarence Thomas to the U.S. Supreme Court because he was "the best man" for the position. The President said, in part:

"The main consideration, in addition to excellence and qualification, is this concept, of interpreting the Constitution and not legislating from the federal bench . . . I told him, if I am not divulging a privacy, that he ought to do like the umpire—call them as you see them . . .

"I've kept my word to the American people and the Senate by picking the best man for the job on the merits. And the fact he's a minority, so much the better. But that is not the factor, and I would strongly resent any charge that might be forthcoming on quotas when it relates to appointing the best man to the court.

"I don't feel that I had to nominate a Black American at this time for the court. I expressed my respect for the ground that Mr. Justice Marshall plowed, but I don't feel there should be a Black seat on the court or other ethnic seat on the court."

CLARENCE THOMAS

JULY 23, 1991.

(By Mike Glover)

DES MOINES, IA.—U.S. Supreme Court nominee Clarsnce Thomas is not completely without some good pointe" and there are deep divisions among civil rights leaders eager for a black on the high court, NAACP head Benjamin Hooks said Tuesday.

Most black people recoguize immediately: If not Clarence Thomas, who?' and the who' is a white person," Hooks said. I don't think President Bush will appoint another black nominee."

Hooks, executive director of the National Association for the Advancement of Colored People, predicted a good, vigorous argument" later this month when his group decides if it will support Thomas. He said the outcome of the argument is not clear.

The ambivalence comes out of fear who the next nominee would be and out of Thomas' record on civil righte questions.

We're also ambivalent because he's made some speeches that had good points in them," Hooks said. He's made speeches that indicated he was aware of the problem.

Bush appointed Thomas to fill a vacancy on the court created by the retirement of Justice Thurgood Marshall.

When it comes to individual discrimination, his record is pretty clear," Hooks said. If a black or woman has been individually discriminated against or mistreated he'll go to the ends of the earth to correct it."

Should the NAACP endorse Thomas, opposition among liberals would likely fade.

Our position will play a very important role," Hooks said. That's what creates the great ambivalence and concern."

At a news conference, Hooks said the glimmers of hope in Thomas' record are better than whoever might be nominated next.

Not only would a second nominee not be black, that person would likely be an unimpeachable conservative, far-right Genghis Khan."

We know what's coming down the pike," Hooks said. We know we are going to oppose them vigorously. We also know the Senate eventually is going to confirm somebody.

We feel very deeply there ought to be a black on the Supreme Court. Clarence Thomas represented a victory and a defeat all wrapped up in one."

Some have said divisions among civil rights groups and liberals mean Thomas will win confirmation. Hooks rejected that argument.

It depends on how these come out, the deep ambivalence and concern that black groups have," he said. When it's manifested, if it's all in opposition. I think Judge Thomas will have a difficult time."

[From the St. Louis Post-Dispatch, July 22, 1991]

LIBERALS AND THOMAS AGREE ON NATURAL LAW

(By Stephen Chapman)

CHICAGO.—Opponents of Clarence Thomas have discovered that on occasion he has invoked something known as natural law. From their reaction, you would think they had found him at the airport in a Hare Krishna robe. Harvard law Professor Laurence Tribe depicte him as a scary medieval relic, "the first Supreme Court nominee in 50 years" to draw on natural law. Thomas, he suggests, may return us to the time when the Supreme Court said women could be prohibited from becoming attorneys because the law of nature consigned them to the job of wife and mother.

He was seconded by Robert Alley, an adviser to Americans United for Separation of Church and State: "If he develops an agenda of declaring 'unnatural' things as immoral, I'm frightened."

The logic is that since natural law has been used to defend oppressive practices, it can be used only to defend oppressive practices. This is like saying that since (a) the Nazis had moral principles, and (b) the Nazis were bad, (c) moral principles are bad. Tribe doesn't mention one modern proponent of natural law, Martin Luther King Jr., who wrote that "an unjust law is a human law that is not rooted in eternal law and natural law."

Natural law is essentially the broad idea, which traces back to St. Thomas Aquinas, that human nature defines how people should live, and that some actions are wrong regardless of law or custom. The term is also sometimes used to refer to the belief that people have inherent rights that others have a duty to respect. Sometimes theee are viewed as God-given, hut not always: Novelist and philosopher Ayn Rand, a vociferous atheist, fervently believed in natural rights.

Far from being eccentric, this general belief is widely accepted. Thomas is also in harmony with one Joseph Biden, chairman of the Judiciary Committee, who during Robert Bork's confirmation hearings said: "What has been protected are important and fundamental liberties that predate the Constitution. I have them because I exist."

In fact, liberal interpreters take a similar approach to the Constitution, arguing that certain transcendent values, like human dignity and equal respect for all, deserve protection even though they aren't mentioned in the text.

Tribe himself thinks it should be read imaginatively to guarantee the right to "a decent level of affirmative governmental protection in meeting the basic human needs of physical survival and security, health and housing, work and schooling."

Yes, that's hypocrisy you smell. "There is not a fundamental difference between using natural law and using moral principles to interpret the Constitution," says University of Minnesota law professor and self-described liberal Suzanna Sherry.

Thomas agrees with the Framers that rights don't exist because the Constitution protecte them; the Constitution protects them because they exist. He shares the view of most Americans that liberties are not something created by government which can be repealed by government, but the undeniable birthright of every individual.

If Thomas' critics want to turn his confirmation hearings into a debate over those propositions, it isn't Thomas who will end up looking scary.

[From the Columbia Daily Tribune, July 23, 1991]

THOMAS' CRITICS MISS POINT OF APPOINTMENT

(By O.U. Ukoha)

A few weeks ago, the nation was shaken by the sudden retirement of the most adored liberal Supreme Court justice, Thurgood Marshall. Subsequently, President George Bush was faced with another choice and chance of making his second nomination to the Supreme Court.

A conservative nominee seemed to be the obvious choice, as most liberals have long feared. Thus, a conservative appellate court judge, Clarence Thomas, was chosen by the president to replace Marshall—If he is approved by the Senate Judicial Committee.

No sooner had Thomas been named than most liberal senators and a number of interest groups jumped into what has become a treacherous witch-hunt. These groups and other critics are afraid of two things; the Supreme Court becoming all-conservative, and Thomas' alleged poor performance heading the Equal Opportunity Commission.

The fear of the Supreme Court becoming all-conservative has been anticipated since the Democrats failed to win the presidency in 1988. Marshall, who had vowed to stay in the bench until the Democrats come up with a likely winner, might have seen the writing on tbe wall when the gulf war was fought and won by allied soldiers. His dream of being replaced by another liberal was shattered, and his resignation made the liberal nightmare come true.

Besides the fear of having a homogeneous court, the main opposition to Thomas is not mainly because of his ideology, but his past performance at the EOC. Critics, including the Congressional Black Caucus, the NAACP, Latino groups and some women's groups, all have one thing to say about Thomas: He

failed to achieve anything worthwhile in the interest of the minority after eight years as the director of that commission. They perceive this poor performance, in a position where he had the means to help people of his kind, to be a sign of negligence, a bite to the fingers that bred and fed him. In short, they see him as a common traitor to his race and to other people he could otherwise have helped. So to pay him back, these groupe have withdrawn support for his confirmation to the highest legal office in the world.

All these allegations seem to be sticking in the ears of the people who care to read and listen to the daily news bulletins. I think there is more to these allegations and witchhunting of these groups. And I strongly believe that these groups are not looking in the right direction. They all seem to have one thing in mind; that Thomas is not a good African-American—he betrayed us, so damned if we'll let him join the conservative conspiracy. Furthermore, it hurts a great deal to see Thomas being dogged by the people same people who are supposed to support him.

What I think these people should be looking at more than anything is, first, the job description of the director of Equal Opportunity Commission; second, whether the job is one of policy making or policy recommendation; and third, whether the director of EOC has the ultimate power to pursue policy goals without legislative and executive oversight.

More examination of the above three points will clearly show that the director of the EOC, like any director of a similar agency, can only recommend policy to the chief executive who appointed him. It is left to that executive to choose which direction to go for implementation. If the chief executive, who happens to be the president of the United States, chooses not to do anything about the policies recommended, that will be the end, even if the heavens are coming down.

I believe that Thomas was a good director by abiding by the will of his superiors. That explains why he lasted so long in that agency, unlike the self-righteous big-mouths we see come and go every 18 months in so many appointed posts. The direction I am pointing to requires psople to see the circumstances that surrounded any Reagan appointee such as Thomas and the lengthening legal docket of the '80s before making any judgment of whether Thomas was a traltor or not.

It is quite disturbing to see the NAACP and Congressional Black Caucus claim over and over that they represent the interests of all African-Americans and minoritles at large without giving everybody the chance to get to know what a person like Thomas is all about. At least everybody agrees that Thomas is qualified for the job, and his impeccable resume shows it.

It is also heartbreaking to see NAACP disown or criticize anybody that does not march and chant civil right songs in the tradition of Martin Luther King Jr. They always overlook the obvious: that there is more than one way to skin a cat. Thomas has this chance to say for himself who he is, what he is and what he is going to do for minorities and, most of all, for America.

Finally, my advice to informed Americans and to critics of Clarence Thomas is to relax and respect the presidential choice and not to underestimate the power of the Senate Judicial Committee by bringing up all these cock and bull stories about Thomas' performance at EOC.

[From the Wall Street Journal, July 24, 1991]

BLACK AMERICA AND THE THOMAS NOMINATION

(By Elizabeth Wright)

Although a USA Today poll early this month suggested that 54% of American blacks approve of the appointment of Clarence to the Supreme Court, blacks around the country are demonstrating more ambivalence then conviction. It's often suggested that young, educated and affluent blacks are fed up with social deterioration, and are therefore ready to ditch the drive for preferential treatment in favor of more independent approaches to resolving social ills. In fact, it is black professionals, and those who aspire to join their ranks, who are among the strongest supporters of the mainline civil-rights organizations.

College senior Jason Hill is bemused by reports to the contrary. An undergraduate at Georgia State University, Mr. Hill has written for national newspapers about the fervent support of his black peers for affirmative action and quotas: "They reject Thomas because they think he's against affirmative action and quotas, and they want to keep both of these policies in place." Just days before the Thomas nomination, Mr. Hill asked a friend whether he would care if the justice nominated to succeed Thurgood Marshall were not black. The response was that, yes, he cared very much. The day after Mr. Bush's announcement, however, Mr. Hill's friend was clearly displeased. "So, I asked if he would prefer a white liberal instead. He didn't want that either. He was really torn."

MOST AT STAKE

College-educated blacks have the most at stake in the racial preference programs that have been extracted by the protest and advocacy of civil-rights groups. They regard affirmative action as essential to crashing the corporate "glass ceiling," which supposedly keeps them from the top executive positions.

Similiarly, a great many black businessmen see racial set-aside contracts as crucial to their success. Their cause is championed by the growing numbers of black networking associations and business-oriented newslettere and magazines. For instance, Earl Graves, publisher of Black Enterprise magazine, recently added a department to the magazine called "Affirmative Action Watch."

Walter Bowie, a clergyman in Jackson, Miss., is a supporter of Mr. Thomas who finds that it is the professionals in his congregation who are most likely to oppose the nomination. He considers typical the attitude of a pre-law student who attends his church. This student, claims Mr. Bowie, is "completely in the sway of the teachings of civil-rights organizations. He doesn't think beyond whatever they project."

Mr. Bowie, however, is campaigning to introduce his parishioners to alternative ideas. He regularly distributes reading material to the group and other blacks he meets in his work, in an effort to broaden their knowledge, especially on matters of public policy. "There needs to be a way to break through the mindset, which is frightening to me," Mr. Bowie says.

Mr. Bowie describes the indignation he felt when he read Robert Bork's account (in "The Tempting of America") of Sen. Edward Kennedy's call in the middle of the night to Rev. Joseph Lowery, head of the Southern Christian Leadership Conference, to urge Mr. Lowery to organize blacks against Judge Bork. The next day at the SCLC convention meeting in New Orleans, Mr. Lowery not only galvanized those in attendance to oppose the Bork nomination, but set in motion a campaign that reached hundreds of black ministers and their churches across the country. Mr. Bowie says, "It alarmed me greatly that a politician like Kennedy could get all of us upset and disturbed about something we really had not investigated for ourselves." Mr. Bowie fears a repetition of that precedent in the case of Clarence Thomas.

George Subira, the author of several well-received business books directed to blacks, is known for his frankness in discussing the black leadership's failure to encourage greater entreprenurial activity among blacks. In the introduction to his book "Getting Black Folks to Sell," he calls on blacks to recognize that they now have "more possibilities for their lives than any generation of blacks." On the Thomas nomination Mr. Subira reflects, "We have had the plans and actions and strategies of blacks who have taken the traditional approach for many years. It would be interesting at this point just to see and even risk what a black conservative point of view could net as benefits to our people."

Paul Battle heads Washington Innercity Self-Help, a grassroots housing advocacy group. He observes skepticism and even apprehension among his membership toward the Thomas nomination. His concern, which he claims reflects that of most in WISH, is the degree to which Mr. Thomas believes in a limited role for government. Mr. Battle asks, "If the government is going to stay out of our lives in terms of assisting ue, how about in areas of regulation, where we need them?" In his daily work, he finds a certain resignation among blacks regarding Mr. Thomas. "The attitude seems to be that if we err, let's err on the side of our self-interest, and they think it's in our self-interest to have a person of color."

There are some prominent blacks, however, who are more enthusiastic about the nomination of Clarence Thomas, notably television journalist Tony Brown. Mr. Brown writes a column carried in many black newspapers, and is one of the most sought after speakers on the talk circuit. He has always managed to remain fraternally linked to the traditional civil-rights organizations, even though he has frequently blasted their leadership with scathing criticism. A pioneer in promoting black enterprise, Mr. Brown has worked hard to make blacks more consoious of the connection between neighborhood businese development and social progress.

In an hourlong radio broadcast last week on a Baltimore station, Mr. Brown denounced the Congressional Black Caucus for "unfurling their partisan colors" in their rejection of Mr. Thomas. He then hurled this challenge at the caucus: "I don't believe the cancus has the clout to organize black America. I don't think you can do it. You're not even powerful enough in the Senate, where you have a Democratic majority, to get the members of your own party to put out Clarence Thomas. Where do you get the power to organize 30 million black folks, when only 27% of them agree with you? I dare you to come out here and do it."

Mr. Brown confounded his opponents and admirers when he announced in a column earlier this year his intention to join the Republican Party. In a Friday interview, Mr. Brown complained of the peculiar ambivalence which enables an individual black openly to identify himself as a "conservative," while advocating special privilege. Mr. Brown found this contradiction especially prevalent among the black leadership. "You have John Jacob of the National Urban

League talking about 'self-help' in one breath, and then the next day espousing the need for a so-called Marshall Plan for black communities."

Mr. Brown noted Jesse Jackson's judicious references to "self-help" at the National Association for the Advancement of Colored People's annual conference in Houston earlier this month and complained that leaders like Mr. Jackson "indict Clarence Thomas and then take his philosophy." He accuses prominent blacks of a "crude intellectual fascism when a black strays from the liberal plantation." "It's time for us to challenge these people and force them out into the open."

Mr. Brown believes the polls to be accurate that show large numbers of blacks ignoring the civil-rights leadership to support the Thomas nomination. He claims that the leadership failed to take the negative posture it would have preferred on the Thomas nomination because they knew "they couldn't get it past the membership." In this he sees great hope.

RUBBER STAMP

The ambivalence and contradictions blacks feel toward Clarence Thomas might be seen merely as a response to his achievements. However, the unwillingness of both the National Urban League and NAACP to take a stand against Mr. Thomas indicates that the USA Today poll caught something meaningful in the mood of blacks. Fewer of them are satisfied to play the role of rubber stamp to black leaders' dictates.

Conservative blacks ought to be cautious in their hopes. Nevertheless, Tony Brown's hopes are shared by conservative blacks who have battled for years to be heard, and who are now praying that the polls are indeed an accurate reflection of impending change among blacks. To the pollsters, black conservatives are intoning, "From your samplings to God's ears."

TOWARD JUSTICE THOMAS

No one should count any chickens just yet, but the prospects that Clarence Thomas will get a new job in the fall are looking up. In particular, when the Black Caucus opposed the nominee, it seems, they spoke as Beltway politicians rather than as representatives of the black community.

The far-left groups will continue their Borking strategy of throwing up enough mud balls in the hope that some will stick to Judge Thomas. Norman Lear's People for the American Way issued a report slandering Mr. Thomas's tenure at the Equal Employment Opportunity Commission. The Association of the Bar of the City of New York, which nearly lost its charity-tax status for its lobbying against Robert Bork, is calling federal judges looking for dirt on Judge Thomas; one judge we know asked the caller from the group why the New York bar felt itself more important than the bar in Luhbock, Texas. The American Bar Association, which also ought to be cut out of any special place in the process, has yet to be heard from.

It appears, though, that if white television moguls and elitist lawyers want to do in Judge Thomas, they will have to do it without much help from black civil-rights groups. While the Urban League and NAACP would prefer a black of a different persuasion, they are holding their fire. Indeed, while it's gone largely unreported, the NAACP's Benjamin Hooks pretty much endorsed the nominee in a news conference in Des Moines Tueeday.

Judge Thomas is, Mr. Hooks said, "not completely without some good points." He elaborated, "When it comes to individual discrimination, his record is pretty clear." Indeed, "if a black or woman has been individually discriminated against or mistreated he'll go to the ends of the earth to correct it."

Mr. Hooks went on to say that his group believes strongly that "there ought to be a black on the Supreme Court." If Judge Thomas is not confirmed, he said, the next nominee probably would not be black and would also be what Mr. Hooks called "unimpeachably conservative, far-right Genghis Khan." We're not sure if a Justice Khan would have practiced judicial restraint, but Mr. Hooks's bottom line sure sounds to us like a vote to confirm.

As we've said, Judge Thomas is an excellent nominee quite aside from his race, and the court's deliberations do benefit from a diversity of backgrounds. At 43, he would also be the first representative on the court of the new generation of intellectual conservative legal scholars. Some interest groups might not like it, but it looks to us as if President Bush summed up the matter pretty well with a photo-op quote yesterday, "There was a kind of flurry of outrage and predictable smearing of the man. But as people get to see him, they get to know his record, they get to know his background. I have a feeling this country is strongly behind him."

[From USA Today, July 26, 1991]

GROWING UP WITH CLARENCE THOMAS

(By Judy Keen)

PIN POINT, GA.—The lives of Clarence Thomas and his sister are as different now as the marble halls of the Supreme Court and the neighborhood where they swam in the Moon River as kids.

Since childhood, the lives of Thomas and Emma Mae Martin have taken divergent tracks: She was once on welfare; his conservatism has earned him the scorn of some black leaders.

And although she says they are close, Martin never told Thomas she'd had a legal abortion ordered by her doctor.

The Supreme Court nominee may soon cast a crucial vote in cases that seek to limit legal abortion. She has no idea how he'd vote, even though those cases wouldn't affect an abortion such as she had: "We don't talk politics."

Yet both are produots of this simple collection of homes south of Savannah. They suffered the segregated buses, schools and theaters of the racist South and survived with pride intact. And they share the conservative values that are the bedrock of Savannah, a moss-draped, ethnically diverse city of 145,000.

"You could be crushed" by racist Savannah "and walk away saying, 'Screw the world, I'm not going to make it,'" says Roy Allen, Thomas' classmate, now a Savannah lawyer and Demooratio state senator.

"Or you could be lucky enough to be in the hands of a nun who said, 'You can rise above it.' Fortunately, Clarence and I were in a milieu that said, 'You won't be crushed by it—you can jump over it.'"

Sister Virgilius, the nun who was Thomas' inspiration at St. Benedict elementary sohool, says she tried to teach "that there was a better life to be had than what they knew."

With disoipline, idealism and high expectations, the nuns fired Thomas with ambition—and a deep sense of what was wrong with segregated Savannah. When the Pledge of Allegiance was recited, "He wondered why we should say 'with liberty and justice for all,'" says Sister Virgilius. "They weren't free and there wasn't justice for all. Because of that, I think he'll be a very fair man."

Martin, 44, is the oldest of Leola and M.C. Thomas' children. Thomas was born June 23, 1948; their brother, Myers, now a Connecticut accountant, was born 17 months later. But by then, M.C. had left.

Leola, alone in Pin Point, picked crabmeat for 5¢ a pound. The family moved around until Leola found a job in town. Strapped for money and child care, she sent her sons to live with their grandparents, Myere and Christine Anderson. Martin stayed with her mother.

Thomas' grandfather, who died eight years ago, set him on the course that led to a Yale law degree, a spot on the federal appeals bench and a Supreme Court nomination.

"What is it that made me different from my sister?" Thomas asked in an interview in 1983. "We come from the same place, the same genes . . . same circumstances but raised by different relatives."

Anderson, who delivered ice, wood and fuel oil, enrolled the boys in Catholic schools. He made them work and drummed into them the value of education.

"Myers taught Clarence how to be independent," says Thad Harris, 74, who'll lived here all his life and, like everyone in Pin Point, knows everyone else. "If Clarence had stayed here, he never would have made it."

Martin went to Catholic schools for a few years, too, but she stayed in Pin Point. She shares her unkempt yellow house with three of her four children and a son's fiance.

She says she chose not to go to college—somebody had to care for an aunt and uncle when they became ill, and she wanted to do it. She works as a cook at the same hospital where her mother is a nurse's assistant.

As a child, Martin says, Thomas "was quiet and he liked to read any book he could get his hands on." They went to the Carnegie Library three times a week—but had to sign up for books to be sent over from the Savannah Public Library, where blacks were banned.

Thomas seemed "determined to learn." When they'd go crabbing, he quizzed adults about everything: how the crabs lived, their anatomy, how to fish for them.

Though Thomas' childhood has been described as one of dire poverty, Martin says, "We weren't hungry. We weren't rich, but we lived together and learned how to share."

Martin's house is shabby, but there's a new Cadillac parked at the spacious brick ranch house next door, and a couple of neighbors down the dirt road have Mercedes.

Their grandfather and a great-uncle provided ample male support. "The only father we knew was my grandfather," she says. They had chores to do, called their mother "ma'am"—and still do—and were spanked when they misbehaved.

The children didn't fantasize great futures for themselves, but when Thomas was still a child, Martin says, "My grandfather told him when he got older he was going to be a preacher or a lawyer."

When he graduated from all-white St. John Vianney Minor Seminary, the caption next to his senior yearbook photo said, "Likes to argue."

Martin, between jobs and raising her children without a husband in the 1980s, was on welfare for a time. In speeches, Thomas has castigated her for it. She says it was "a rough ordeal," but he never criticized her face-to-face for the decision.

"We talked about it a lot, and he used to ask a lot of questions about why people got

on it," she says of the little brother she still calls "boy."

"I needed it," she says. "I had two kids and one on the way in a couple months and I had no choice. He understood what it was for and how I was situated."

Martin doesn't think her brother knows about her abortion, which she had on her doctor's orders about 16 years ago when she began bleeding early in her pregnancy.

"It was a choice that I didn't want to make," she says. "I had a choice to live or die. My doctor put it to me that I didn't have any choice."

Her view now on abortion: "It's another life to me. . . . I don't approve of the idea unless it's somebody's life at stake. Then, yes."

In his hometown, Thomas' conservatism makes sense because of his belief that he's earned everything he's achieved.

"Somewhere in this national press is this feeling that if you're black, you should be liberal," says Allen. "I'm saying no, Clarence is not some miniscule minority voice."

Polls do show blacks are not more liberal than whites: There's no statistical difference on issues ranging from gun laws to abortion to school sex education; on topics like women in politics, gay rights and religion, blacks are more conservative.

Longtime Pin Point resident Harris has another theory: "They were raised that way—to do for yourself. Most all of us have had to make our own way in this world. When you can, you should be admired for it."

[From the New York Times, July 28, 1991]

WHAT CLARENCE THOMAS KNOWS

(By Guido Calabresi)

NEW HAVEN.—I am a Democrat. Since the President and others have started to throw mud on liberals, I have proudly asserted that I am a liberal. I despise the current Supreme Court and find its aggressive, willful, statist behavior disgusting—the very opposite of what a judicious moderate, or even conservative, judicial body should do.

I think it strange that these strict destructionists should be allowed to get away with the claim that they are following the Constitution when, instead, they persistently reach well beyond the issues before them to impose their misguided values on the Great Charter and on all of us.

Yet I support the nomination of Clarence Thomas to that Court. Why?

First, because I know him and know he is a decent human being who cares profoundly for his fellows. He is not the caricature that some of his opponents have put forth. It is true that he has come to believe that some things we liberals have espoused to help African-Americans (and many other people, too) are counterproductive. I think that on the whole he is wrong.

But his conclusion is not so important as the fact that he does not deny that such measures helped him or that the people whom these remedies seek to help are deserving and often desperately need help. He has not turned his back on those in need, and especially not on African-Americans. If he had, he would be unworthy to sit on the Supreme Court. What he has done is to conclude, with many others and probably wrongly, that certain measures have done more harm than good. I wish I could convince him otherwise. Maybe some day someone will.

What matters most, though, is that unlike many on the Court, he does know the deep need of the poor and especially of poor blacks, and wants to help. That will keep him open to argument as a Justice should be.

The second reason I support him derives from this direct knowledge of what it is like to be in need. This Court is outrageously homogeneous. It is overwhelmingly made up of gray Republican political hangers-on of virtually identical backgrounds. They all bring to the Court the same life experience and lack thereof.

How can they know what discrimination really means? How can they understand what fear of police, prosecutorial or state abuse and brutality is? When they babble that coerced confessions need not make trials unfair; that discrimination must be proved in individual cases and not through statistics, or that a single appeal is adequate even if a defendant is served by a lousy lawyer, they sound like what they are: people who neither through personal experience nor academic thought could ever imagine themselves erroneously crushed by the power of the state.

Clarence Thomas, at least, knows better, and someday, in some case, that knowledge will make itself felt.

Of course, there are others as able as Clarence Thomas who also know this. And if I were President I would name someone like that who also shared my views. But it is a gross illusion to think that this Administration will do any thing like that any more than the Reagan White House did when Robert Bork was cruelly caricatured and defeated. What we got then, what we would get now, is someone less able, with less life experience, a gray follower of all that is woret in the Court today.

And now, as then, The New York Times and eminent scholars who defeated the nominee will join the bandwagon of support for the nonentity. For in such a person the "offending" views will not stand out against the grayness of his background.

No, I would much rather have someone who does stand out, who holds his or her own views, with which I deeply disagree but who has somewhere, some time, experienced life and has been willing to stand up against the pack. Better such a one than someone who will readily blend in and be another anonymous vote for the activist and virulent views now so dominant on the Court.

For there is just a chance that such a one may stand up to the pack again, and remind us all of what it is like to be poor and friendless and to be facing a hostile state.

[From the St. Louis Post-Dispatch, July 28, 1991]

THE CLARENCE THOMAS I KNOW: HIS LIFE IS THE EMBODIMENT OF THE VALUES OUR NATION PRIZES

(By Alex V. Netchvolodoff)

Clarence Thomas is a black man from rural Pinpoint, Ga. He was born to an impoverished family with an absentee father, an overworked mother, a home without plumbing and a very bleak future. Yet Clarence Thomas has just been nominated by President Bush to serve as associate justice of the U.S. Supreme Court.

At an early age, Clarence was sent to live with his maternal grandparents. For him, it was a turning point. He became the object of his grandfather's unrelenting attention and expectations, "work hard . . . and then work even harder", be self-reliant, get a decent education; be faithful to your vision of personal achievement and, by example, to your own people's struggle." Clarence has been living up to his grandfather's expectations ever since.

Thomas' growing up was stark. He had more than a full-time job on his grandfather's truck, but nevertheless, he excelled at his all-black parochial school. There was little time and money for diversion. Even so, Clarence disdained Savannah's segregated movie theaters and restaurants. Instead, he satisfied his appetite for books at an all-black library.

Clarence left Savannah for Holy Cross College with his wits and a few dollars in the sole of his shoe. He founded the Black Students' Union and began to consider how blacks could succeed in a white society. He graduated with honors and went on to Yale Law School, where he served as a student volunteer at the New Haven Office of Legal Assistance.

I first met Clarence Thomas in 1974 when I flew him to Jefferson City as part of an effort to recruit him as an assistant attorney general. He had to know how every gauge and every control worked on that plane. His exuberant curiosity and penetrating mind were striking. By the time we arrived, he was practically flying the plane, and he was great company in the process.

At his job interview, Clarence interviewed us! He wanted to be assigned the toughest litigation, and a heavy workload. He got his wish—and he delivered. As Thomas was leaving state government for the climes of a corporate law practice at Monsanto, Robert Dowd, presiding judge of the Missouri Court of Appeals, noted that Clarence was one of the best prepared and most effective lawyers to appear in his court.

Thomas was also a person of great self confidence and integrity. He once told the attorney general (who had suggested that Clarence show a bit more political sensitivity) that if the attorney general wanted a political opinion instead of a legal opinion, then he should go find a politician rather than a lawyer to write it. The opinion was issued as Thomas had drafted it.

Clarence was a great conversationalist. Because he had literally grown up with discrimination, I was particularly interested in his views on civil rights. He had absorbed the thinking of America's black leadere through the prism of his grandfather's values. Clarence applauded Booker T. Washington's emphasis on black education. From W.F.B. DuBois, he borrowed an aggressive and unbending contempt for discrimination and social injustice. From Martin Luther King, he advocated nonviolence and social reconciliation. From Malcolm X, he embraced the imperatives of black independence, pride and self-help. And from Thomas Sowell, he accepted free markets and hard work as the best path to economic justice. While arguing that the full force of the law and the moral authority of society should be marshaled against racial discrimination, he rejected as counterproductive numerical goals and quotas in schools and the work place.

As chairman of the Equal Employment Opportunity Commission, Clarence had a chance to put these values into action. He had inherited a demoralized, directionless agency. Several years later, Clarence proudly showed me around. Despite congressional budget cuts, he had reorganized EEOC's finances, personnel and docket. The staff was upbeat and proud of its accomplishments. New enforcement records had been set. Upon Thomas' departure to the U.S. Court of Appeals, the new EEOC headquarters was named after him.

Clarence Thomas is an authentic American hero. His life is the embodiment of the values that our nation prizes. He has developed, with singleness of purpose, an inquiring and penetrating mind. He has pureued, with equal tenacity, his vision of self-improve-

ment. He has served loyally as a role model for his own people. He has refused to bend to bigotry and discrimination. He has turned the other cheek. He has advocated a vision for social and economic justice that is focused on education and self-reliance, rather than on condescension and reprisal.

He is open-minded, but he calls things as he sees them. He is forever linked by history and by personal memory to those in our society who are weak, fragile or different. Who better to represent us in the Supreme Court of the United States of America than Clarence Thomas?

I, for one, am proud to tell his story, and I look forward to his service on the court—for the challenge to us and the surprises for us that I know it will bring.

[From the Wall Street Journal, July 31, 1991]

ON BROWN VERSUS BOARD OF EDUCATION, CALL HIM THURGOOD THOMAS

(By L. Gordon Crovitz)

The NAACP board is scheduled to decide today whether to join the interest groups that oppose a black Supreme Court nominee. Benjamin Hooks has said his group would have preferred another Thurgood Marshall. The NAACP should know that when it comes to the Supreme Court's most important civil rights case, Clarence Thomas is another Thurgood Marshall.

With all the smoke cooked up by Judge Thomas's critics, no one seems to have noticed that he takes precisely the same broad view of the constitional promise of equality that Mr. Marshall as the lawyer arguing *Brown v. Board of Education* tried—unsuccessfully—to persuade the Supreme Court to adopt.

The 1951 case was a great victory for the civil rights movement and especially for the NAACP where Mr. Marshall worked. The justices finally declared that separate but equal facilities were unconstitutional. A filibuster in the Senate perpetuated Jim Crow Segregation, so it was appropriate that the court struck down these racist lawe.

The problem is that *Brown* is a classic example of a correct result reached by lousy reasoning. The option by Chief Justice Earl Warren was based almost entirely on dubious sociological data on how much better black students supposedly learn when they study in the same class rooms as whites. A famous footnote cites behavior studies in publications such as the International Journal of Opinion and Attitude Research. It's now clear that this case was the beginning of an era of judicial activism that substituted shadows, penumbras and judicial social engineering for adherence to constitutional text and original intent.

There are nearly identical arguments about what the *Brown* opinion should have said in Mr. Marshall's legal briefs in the case and Judge Thomas's recent speeches and law review articles. They agreed that the court should have based its decision on legal and constitutional sources, not sociologists. They both referred to the Declaration of Independence's self-evident truth that "all men are created equal," which finally applied to blacks after the Civil War through the Fourteenth Amendment.

Mr. Marshall's brief and Judge Thomas's writings both oited Justice Harkin's dissent from the 1896 case that established the doctrine of separate but equal, *Plessy C. Ferguson* (see excerpts nearly). Justice Harkin would instead have given the Fourteenth Amendment its common-sense reading, which is that it was intended to replace slavery with equality by forhidding the government from treating people differently by race. The amendment promised blacks all the privileges and * * * of citizenship and equal protection of the laws.

Judge Thomas wrote that if the opinion in *Brown* had adopted this broader view of the Fourteenth Amendment, separate but equal could have been invalidated without citing "Kenneth Clark's controversial doll etudies, which could just as easily have been used in support of segregation as agalnst it."

The court missed the forest for the trees. "The *Brown* focus on environment overlooks the real problem with segregation, its origin in slavery, which was at fundamental odds with the founding principles. Had *Brown* done so, it would have been forced to talk about slavery, which it never mentions," Judge Thomas wrote. He said that a better understanding of the "first principles of equality and liberty" would "lead us above petty squabbling over 'quotas,' 'affirmative action' and race conscious remedies of social ills."

Once on the Supreme Court, Mr. Marshall supported quotas, but he made some of the same points about a colorblind Constitution in his brief in *Brown*. "The roots of our American egalitarian ideal extend deep into the history of the Western world," the brief said. "Philosophers of the seventeenth and eighteenth centuries produced an intellectual climate in which the equality of man was a central concept. Their beliefs rested upon the basic proposition that all men are endowed with certain natural rights."

Mr. Marshall's reference to natural rights is important because Judge Thomas's critics accuse him of weirdness for using similar terms. For different reasons, it's important reassurance for both liberals and conservatives to understand why Judge Thomas wrote about natural rights. The reason was his search as head of the Equal Employment Opportunity Commission for a more enduring guarantee of equality than the fleeting legal standards in Brown.

Liberals should know that Judge Thomas is not on a goose chase for penumbras or emanations from the Constitution into which he can insert his conservative policy preferences—as Justice Marshall too often did to enact his liberal views. Conservatives should know that he involves natural rights in the service of original in tent jurisprudence. His law review article, "Toward a 'Plain Reading' of the Constitution—The Declaration of Independence in Constitutional Interpretation," stressed that terms must be read according to their original meaning. Individual liberty is constitutionally protected, but group righte are not; discrimination must be punished but not by mandating quotas.

The NAACP's Mr. Hooks recently noted this distinction. Judge Thomas is "not without some good points," he said, adding that "if a black or a woman has been individually discriminated against or mistreated he'll go to the ends of the earth to correct it."

Now it turns out there's not much difference between Justice Marshall and Judge Thomas on the broadest issues of civil rights. It will be fascinating to see if the NAACP has the courage to abandon its usual liberal allies who hope to do to Judge Thomas what they did to Robert Bork.

NO DISAGREEMENT HERE

Thurgood Marshall—(As the NAACP lawyer on Brown v. Board of Education in 1954 arguing for a broad constitutional rejection of the separate-but-equal doctrine).

While the majority opinion sought to rationalize its holding on the basis of the state's judgment that separation of races was conducive to public peace and order. Justice Harlan knew too well that the seeds for continuing racial animosities had been planted "Our Constitution," said Justice Harlan "is colorblind, and neither knows nor tolerates classes among citizens." It is the dissenting opinion of Justice Harlan, rather than the majority opinion in Plessy v. Ferguson that is in keeping with the scope and meaning of the Fourteenth Amendment.

Clarence Thomas—(Writing in the Harvard Law Journal in 1987):

The great flaw of Brown is that it did not rely on Justice Harlan's dissent in Plessy, which understood well that the fundamental issue of guidance by the Founders' constitutional principles lay at the heart of the segregation issue * * * Justice Harlan's Plessy opinion is a good example of thinking in the spirit of the Founding His arguments can be fully appreciated only in light of the Founders' intentions. Largely as a result of the dubious reasoning of the post-Plessy Court, and a national indifference to the rights of all Americans. Justice Harlan's argument that the Constitution is "colorblind" did not rally supportere.

HOW EEOC THRIVED DURING THOMAS'S TENURE AS CHAIRMAN

(By Pamela Talkin)

The nomination of Clarence Thomas to the Supreme Court has evoked a great deal of productive and enlightened discussion. Unfortunately, it has also resulted in the repetition, however innocent, of unfounded criticisms of his record as chairman of the Equal Employment Opportunity Commission.

Clarence Thomas virgously and effectively enforced the laws against employment discrimination. I marvel at the willingness with which generally intelligent and skeptical individuals have accepted bare assertions to the contrary. The record establishes that the EEOC came of age under the leadership of Judge Thomas. As his chief of staff, I witnessed it.

Why would the Republican chairman of the EEOC ask me, Democrat and a career federal employee, to be his chief of staff? And why would a "politically correct" civil servant accept the position? Because we shared a commitment to equal employment opportunity and the full protection and vindication of the rights of women, minorities, older Americans, and workers with disabilities.

We were dedicated to the goal of making te EEOC a credible and aggressive law enforcement agency. Thomas concentrated on my law enforcement experience, ignored my party affiliation, and did not question me as to my philosophical views; my strict and single mandate from him was to help make the EEOC effective.

During his tenure as chairman, the EEOC went to court on behalf of workers 60 percent more often than in previous years and collected more than $1 billion on behalf of American workers, more than during any other comparable period.

For the first time, policies wers adopted requiring thorough investigation of all charges of discrimination and full redress for its victims. Workers unlawfully deprived of a livelihood were to receive a job and full backpay. Those who discriminated had to take such additional affirmative steps as discharging offending supervisors and posting notices to employees to assure them that their rights would not again be violated.

In the past, field offices made unreviewable determinations to litigate only a few of the

many cases found to have merit. Under Thomas, all meritorious cases were submitted to the Commission for litigation.

Some have mistakenly assumed that the increased efforts on behalf of individual workers constituted a shift away from concern about the existence of broad-based discrimination stemming from employment patterns and practices.

To the contrary. In 1981 the EEOC had only one broad systemic pattern and practice cases in litigation; in 1988 the Commission had 16 such cases in active litigation. Moreover, the EEOC, on its own initiative, actively prosecuted as broad, pattern and practice actions hundreds of cases that had been filed as individual claims.

In accordance with precedent, Thomas voted to approve settlements involving the use of goals and timetables, despite his now well-publicized personal views on the efficacy of such measures.

Reasonable people can and do differ with his views on this matter. However, the potential use of goals and timetables was involved in less than one-half of one percent of the more than 60,000 cases filed annually. A difference of opinion over the utility of this one form of affirmative action cannot serve as a legitimate basis for cavalier assertions that Thomas did not enforce the laws ensuring equal opportunity and prohibiting discrimination.

Judge Thomas was committed to identifying and eliminating all arbitrary obstacles to equal opportunity. Employers were required to recruit actively minorities and women and to set aside millions for the training of minority and women employees and the establishment of scholarship funds for minority students.

Federal agencies were required to submit affirmative action plans identifying barriere to the full employment of all employees and detailing the steps to be taken to remove those obstacles.

When he became chairman in 1982, Thomas found an EEOC in disarray. Clarence Thomas not only built the infrastructure, but he also succeeded in transforming the EEOC into a respected and highly professional agency.

No one was more dismayed than Clarence Thomas when the evolving EEOC did not, on occasion, live up to its own enhanced expectations. As he often stated, we built our wagon while we were riding in it and, with 50 offices and 3,000 employees, mistakes occurred. Thomas took full responsibility for any shortcomings and redoubled his efforts to make the EEOC a formidable opponent of those who would violate the laws prohibiting discrimination.

Today's EEOC is a fitting and lasting tribute to Clarence Thomas's vision and his unwavering commitment to upholding the laws protecting American workers.

DREW T. BROWN III

• Mr. PRYOR. Mr. President, I would like to bring to the attention of my colleagues a person whom I believe deserves special recognition.

Drew T. Brown III has traveled all across our Nation spreading his message: Education plus hard work minus drugs equals the American dream. Drew's hard work and success in his own life gives him more than adequate credentials to speak of the American dream.

Drew was born in New York, NY, and grew up in Harlem and Brighton Beach, Brooklyn. He then attended Southern University in New Orleans and received a degree in business administration and economics in 1977. Joining the Navy in 1981, Drew gained his commission after attending the Aviation Officer Candidate School. Drew earned his "Wings of Gold" and was sent to the Naval Air Station in Oceana, VA, where he was on the team of the Black Panthers.

Flying for the Navy in the A–6 Intruder, Drew traveled extensively around the world. He is now an active member of the Naval Reserves and has just been selected for promotion to lieutenant commander. He began flying as a pilot for the Federal Express Corp. in June 1988.

Drew's determination and commitment as a pilot is carried into his American dream mission. He feels that he can be a role model for others who wish to attain the success that he has.

Traveling and appearing on numerous television and talk shows, Drew applies his determination to get his word out. A man with such a high degree of caring and commitment to the youth of America can certainly be classified an American hero.

Awards seem to find Drew for, in addition to his flying awards, he has been awarded the Meritorious Service Medal by the President of the United States and the U.S. Chamber of Commerce Special Salute for his outstanding leadership and deep concern for this country's youth.

He has also written an autobiography entitled "You Gotta' Believe", which sold out the first printing in 3 weeks.

Mr. President, I am honored to bring to the attention of my colleagues suoh a man as Drew T. Brown III. •

CONGRATULATIONS TO GWEN McFARLAND

• Mr. SASSER. Mr. President, I want to take this opportunity to congratulate my good friend, Gwen McFarland of Nashville, TN, who has recently been elected president of the National Federation of Democratic Women.

Gwen was born in the small middle Tennessee town of Lawrenceburg, where she received her early education. She attended George Peabody College in Nashville, receiving B.A., M.A., and Ph.D. degrees. After a successful career in education, she decided to retire and become a lawyer. Gwen received her J.D. degree from the Nashville School of Law.

Gwen and her husband, George, are the parents of two children who have already distinguished themselves. Their son, Tony McFarland, is a prominent attorney with the firm of Bass, Berry & Simm. Their daughter, Joni Baker, is a former member of my staff and now is a distinguished member of our Nation's Foreign Service, currently serving in Africa. Gwen and George are also the proud grandparents of Matthew, Patrick, and Thomas McFarland.

Gwen is a modern American woman. She has combined the duties of wife and mother with those of educator, lawyer, and political leader.

I have had the honor of working with Gwen since my service as chairman of the Tennessee Democratic Party and my election to the U.S. Senate in 1976. Gwen has always been a leader in my State of Tennessee and she will prove to be an outstading president of the National Federation of Democratic Women.•

THE ATTACK ON LITHUANIAN BORDER POSTS BY SOVIET TROOPS, AND S. 1599, RELATING TO TRADE STATUS FOR THE BALTIC STATES

• Mr. DIXON. Mr. President, last night, six Lithuanian border guards were shot and killed by Soviet Interior Ministry Black Beret troops at a border post on the Lithuanian-Byelorussian border. The murder of the Lithuanian border guards was the bloodiest attack on a border post to date.

Over the past 6 months, this border post has been attacked four times, and burnt to the ground. Last night's attack underscores the impunity with which the Interior Ministry troops act against the Lithuanians. Our President should condemn the acts in the strongest possible terms.

The attack also underscores a further deterioration of central authority in the Soviet Union. On the one hand, the administration in this country is tripping over itself to grant most-favored-nation status to the Soviet Union, yet this same Soviet Government continues to deny, through brutal force, the legitimate aspirations of the Lithuanian, Lativian, and Estonian people.

We will soon have to deal with the issue of most-favored-nation statuts for the Soviet Union, all the while trying to maintain, at least publicly, our nonrecognition policy toward the forcible incorporation of the Baltics by the Soviet Union.

The administration, however, refuses to grant MFN to the Baltic States directly. It will instead propose to extend most-favored-nation status to the Soviet Union, and extend it to the products of Lithuania, Latvia, and Estonia. While this piggyback approch may mollify some, at its core, this approach crosses the line of our nonrecognition policy. If the United States truly does not recognize the forcible incorporation of the Baltics, then it should extend MFN, in a separate agreement, to Latvia, Lithuania, and Estonia, at the same time as this is done for the Soviet Union. That would be the equitable thing to do, and still it would be consistent with our nonrecognition policy.

My distinguished colleague, Sentor BRADLEY, has introduced legislation to

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cable television legislation, parental leave legislation as well as concluding conference work on such important items as the crime bill and the highway measure.

We have a full plate before us. The Senate will be in working session 5 days each week and there will be votes scheduled throughout the 5 days of work.

With the cooperation and consideration of all Senators, I hope we can debate fairly and thoroughly on those issues and vote on them, and where significant differences divide us debate those differences in a forthright and civil manner and then move promptly once the Senate reaches agreement.

The changes occurring abroad cannot distract us from the vital issues facing Americans at home. I intend to put the priorities of Americans first in the remainder of the 102d Congress.

RECOGNITION OF THE REPUBLICAN LEADER

The PRESIDENT pro tempore. The time of the leader has expired.

The Republican leader is recognized under the standing order.

SENATORS PRYOR AND STEVENS

Mr. DOLE. Mr. President, first I wish to join my majority leader in welcoming back Senator DAVID PRYOR. I also note on the floor my friend from Alaska, Senator STEVENS, who has undergone a rather serious operation during the recess and he is back hale and hearty and ready to work. I will be making further statement with reference to Senator PRYOR later today.

CONGRESS RETURNS TO FACE THE DOMESTIC AGENDA

Mr. DOLE. Mr. President, a lot has happened in the world since we last met here. But despite the earth-shattering changes in the Soviet Union, there is plenty of work left for us to do. The American people expect us to get busy, and so does President Bush.

I do not need a calendar to know that 1992 is around the corner. No doubt, we will hear a lot of talk this fall about the domestic agenda—who has one and who does not. Much to the disappointment of his critics, President Bush has a domestic agenda. It is the domestic agenda the people elected George Bush to implement in the 1988 landslide. The fact is, his opponents do not like it because it is not their agenda. It is standard political spin to bash the President—but that is not why we are here.

BIPARTISAN COOPERATION

Let us face it, the only way any domestic agenda will be enacted is with bipartisan cooperation. We may share many of the same goals, but we often disagree on how to achieve them. And we have to face reality, and start listening to the taxpayers for a change—we do not have any money to start new, freewheeling spending programs. And under our budget agreement, any programs we do start have to be paid for.

PAYING FOR PROGRAMS

We are all sympathetic to the plight of the unemployed—one person out of work is one too many. But even the New York Times—not exactly a Republican newsletter—characterizes the Democrats' latest unemployment solution as a legislative hoax. I had a plan last month, too, that would have paid for itself, and would have been signed into law by President Bush—a fact conveniently ignored by the President's critics.

I also see where the Democrats may hatch some more soak the rich schemes. They may sound good, but we have seen the impact of the so-called fairness of the luxury tax implemented by the Democrats last year—pink slips all the way from aircraft and boat manufacturers, to car dealers and small-town jewelry shop owners. They said they were giving the middle class a helping hand by taxing the rich—instead, that hand pointed them to the unemployment line.

I expect we will see no shortage of efforts to slash defense spending to pay for a laundry list of big spending programs. But if the incredible turn of events in the Soviet Union taught us anything, it's that the only certainty is uncertainty. And if you ask me, uncertainty in the nuclear world and unilateral disarmament just do not mix.

HEALTH CARE: THE PEOPLE'S NO. 1 PRIORITY

We all agree that health care is a national priority. I spent the recess traveling to every corner of my State, and every place I went, health care was the No. 1 issue, followed closely by the Federal deficit. But there are not any easy answers to the health care dilemma. It will take creative thinking, courage—and yes, a way to pay for it.

These are just some of the challenges facing us for the rest of the year.

On this side of the aisle, we are ready to cooperate to implement a responsible, realistic agenda, not some political agenda. And when we are done, we should adjourn, go home and listen to the people again.

Let us get 1991 done before we start 1992.

OPENING OF THOMAS HEARINGS

Mr. DOLE. Mr. President, the Senate returns to Washington today with a bang. Over in the Judiciary it is lights, camera, action as the curtain goes up on the confirmation hearings on the nomination of Clarence Thomas to the Supreme Court.

The great Will Rogers once said that Senate hearings "have always contributed more to amusement than they have to knowledge." Fifty years later, Rogers words ring more true than ever.

I have been in this body long enough to witness a complete reversal in the rules of confirmation hearings. It was not all that long ago when the Senate was comfortable basing their vote on the experience, the ability, and the character of the nominee.

The hearings were usually fast and efficient, but they were not very good theater.

All that has changed. Through no fault of Judge Thomas, the hearings which open today are the hottest show in town.

Those opposed to Judge Thomas quickly realized that, as the ABA has concluded, Judge Thomas is qualified to sit on the Court. They realized that he is a man of exceptional ability. He possesses a brilliant intellect, and has excelled in every position in which he has served. They realized that his character is second to none—a character forged in a childhood of poverty in the segregated South.

And they realized that Judge Thomas' life and record were examined by the Senate when he was nominated as Chairman of the EEOC, when he was renominated for a second term, and when he was nominated for his current position as judge on the D.C. Circuit Court of Appeals. On each occasion, Judge Thomas was overwhelmingly confirmed.

Given the fact that Judge Thomas does have the experience, the ability, and the character to serve on the Court, those opposed to his nomination turned elsewhere.

Throughout much of August, committee staffers were digging under every rock, investigating every nook and cranny of Judge Thomas' life. A detailed analysis of his background has appeared in nearly every paper in the country. A bevy of so-called liberal scholars and politically correct intellectuals have examined every word spoken or written by Judge Thomas, as well as applying 20/20 hindsight to every decision he made in his professional life, and issued their opinion that he is too conservative, or too insensitive.

And perhaps most disturbingly, some members of the committee are promising that they will pin Judge Thomas down on his opinions on issues which may come before the Court.

The implied threat is that if his answers are not the correct ones, then he will not be confirmed.

As I have said before, this litmus-test approach has been rejected by anyone who is serious about maintaining the independence of the Federal judiciary.

As former Chief Justice Warren Burger recently said:

> No nominee worthy of confirmation will allow his or her position to become fixed before the issues are fully defined * * * Before

the Supreme Court with all the nuances that accompany a constitutional case. Presidents and legislators have always had platforms and agendas, but for judges, the only agenda should be the Constitution, and laws agreeable with the Constitution.

It is my hope, Mr. President, that Chief Justice Burger's words will be remembered, and that the goal of Chairman BIDEN and the Judiciary Committee will be good government, and not good theater.

Mr. President, I reserve the remainder of my time.

Mr. RIEGLE addressed the Chair.

The PRESIDENT pro tempore. The Senator from Michigan.

EXTENSION OF MORNING BUSINESS

Mr. RIEGLE. Mr. President, the majority leader has indicated he has no objection to extension of time beyond 10 o'clock.

I, therefore, ask unanimous consent to be able to speak in morning business for 10 minutes.

The PRESIDENT pro tempore. Does the Senator ask to speak for 10 minutes, or does he ask that morning business be extended 10 minutes beyond the hour of 10 o'clock?

Mr. RIEGLE. I ask unanimous consent that it be extended beyond the hour of 10 o'clock. Perhaps also to accommodate the Senator from New York, if he wishes then to speak as well, I ask unanimous consent it be extended until 10:10 so I might have 10 minutes in which to speak.

Mr. STEVENS. Reserving the right to object, Mr. President.

Mr. RIEGLE. I am advised it will be better to make it the hour of 10:30 because other Senators also wish to speak.

The PRESIDENT pro tempore. Is there objection to extending morning business until the hour of 10:30 a.m.? The Chair hears no objection. It is so ordered.

Is there objection to the Senator from Michigan seeking 10 minutes? The Chair hears no objection. The Senator from Michigan [Mr. RIEGLE] is recognized for 10 minutes.

WELCOME BACK, CONGRATULATIONS, AND SUPREME COURT NOMINEES

Mr. RIEGLE. I thank the Chair and my colleagues. Mr. President, I want to touch on two or three points that have been made before I go to the thrust of what I rise to speak to this morning.

First, I want to also welcome back our colleague DAVID PRYOR. We are all delighted that his return to good health lets him come back to the Senate today.

I also want to, at least in passing, acknowledge and congratulate the Baltic States on their achievement of independence. It is a tremendous breakthrough for the ideals of freedom throughout the world after 51 years of captivity, their courage and strength in standing up to the Soviet Union. And those around the world, some here who stood with them during that time, I think have much to celebrate.

Finally, I want to say also on the Thomas nomination which was just referred to by the Republican leader, what has not been contained in all of the news stories that I have seen is the fact that if Mr. Thomas—and I have not made a decision one way or the other on this nominee and will not until the hearings have concluded—but if this nominee serves to the same age as Thurgood Marshall, the man that he has been named to replace, he will serve on the Court until the year 2030.

Of course, with Supreme Court nominees, like other Federal judges, once they are appointed, they are appointed for life. So this is a very important decision that we are making that is going to affect this country for decades into the future, probably beyond the lifetime of anyone now serving in the Senate. So the year 2030 out there is one of the benchmarks that I think we have to have in mind.

Also, the Supreme Court is composed of only 9 people, 9 out of a nation of 250 million people. So I would think that for each nominee, not just this nominee, but those before and those yet to come, that we would use the very highest measuring sticks in terms of qualifications and relevance of their background to the job in deciding who should or should not serve on that Court. This is particularly important given the momentous meaning of the issues there and the time into the future, as I have just cited, over which those decisions are likely to be made.

THE DOMESTIC ECONOMY

Mr. RIEGLE. Mr. President, let me move to the issue I came to talk about this morning, and that is the domestic economy. Like other Senators, I have crisscrossed my State during the recess and I have talked with people around the country. By every measure, our country today is in deep and serious economic trouble. Frankly, our Government has no plan either to recognize the problem or to respond to it, and that is just not acceptable. We have people all across the country who have lost their jobs, working part time in the last 2 months. The official data indicates we have had 700,000 Americans unemployed who finally have stopped looking for work because they have not been able to find it.

Yes, reference was made to the fact we passed an unemployment compensation extension bill, an emergency bill for benefits before the recess. The President decided not to let that take effect. There are 170,000 people in my State and their families who would be drawing those benefits had the President allowed that legislation to go into effect. They are not getting it. Yet, they need it. There is $8 billion sitting in the national unemployment trust fund, the extended benefits trust fund created for precisely that purpose. That is true for people across the country.

I would like to run through a series of news stories just in the last week. Here is one from the front of the Detroit Free Press. The headline on this story is, "Jobs Vanish in Northern Michigan. Boyne City Plant to Lay Off 289 Workers." The story is about a United Technology plant that is closing up there. These are not temporary layoffs; these are permanent job losses.

It points out that in that region of our State, in the first 7 months of 1991, three counties, Charlevoix, Emmet, and Antrim Counties—these are northern Michigan, not the big manufacturing centers like Detroit, Flint, and Pontiac—these three counties have lost 7 percent of their manufacturing jobs already this year. Those are permanent job losses.

One of the people in the area was commenting on this, and I just want to read the comment into the RECORD.

This one particular man said that slow new-car sales have forced the company to consolidate operations. Some of the work will go to the United Tech plant in Mexico.

You might remember that there is a big push to get into a free trade agreement with Mexico. We can send a lot more American jobs down to Mexico. The next thing we are going to hear is talk from our Government that the American workers probably ought to go down to Mexico to get these jobs that are going down there.

The story goes on to say—another person is commenting here—

Most of our jobs are going to England, to Japan, and everywhere else. Right now, the trend is to Mexico. Free trade is hurting our businesses. You don't know what you're getting when you see a label that says "Made in U.S.A." I heard there's a town in Japan that renamed itself "U.S.A."

Here is another story, also out of the Detroit Free Press, on restaurants closing in Detroit. This is the trickle-down effect of the loss of jobs throughout the manufacturing base. Company after company is closing in our States. Bankruptcies are at an all time high. There was a story yesterday to the effect that home mortgages are in arrears in more cases than we have seen in a long, long time.

Then, in the Wall Street Journal, an article titled "Sales of Cars Stayed in Slump in Late August," talking about the serious problems here. Lansing State Journal, "Spending Slump Hits Big Retailers—Again." It talks about how the companies like K mart and the rest who sell at the retail level are seeing low sales levels.

SENATE—*Friday, September 13, 1991*

(Legislative day of Tuesday, September 10, 1991)

The Senate met at 9:15 a.m., on the expiration of the recess, was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Righteousness exalteth a nation: but sin is a reproach to any people.—Proverbs 14:34.

God of our fathers, as I pray this morning I am mindful of a word from James Madison in 1788 who said: "To suppose that any form of government will secure liberty, or happiness without any virtue in the people is a chimerical idea." Those who founded our Nation were not saints; they were sinners as are we all. But they took God seriously, as should we. And they took virtues and values seriously. They believed in a God of love, full of grace and truth who, in mercy, forgives the sinner when he acknowledges his need. Though they, as we, often failed, their faith sustained them through the bitterest days of the Revolution and the invention of a form of government for which they had no models in history. Their faith in God made them strong and envisioned them for a political system in which people were sovereign, equal, and free. And the purpose of government was to guarantee this equality and freedom.

Gracious God, in these exciting and critical days, forbid that we should deny that faith, the virtue it generates, and put our future at risk. Renew in us the belief in a righteous God who ordained righteousness which exalts a nation, and save us from the sin which denies law and order, the foundation of democracy.

In the name of Him who is righteousness incarnate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 13, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business not to extend beyond the hour of 9:30 a.m. with Senators permitted to speak therein for not to exceed 5 minutes.

JUDGE THOMAS AND THE TV SPOTS

Mr. SANFORD. Mr. President, the misleading or vicious television spot is a recent development that has severely damaged the American political process. A quick slur, a lie, a racial innuendo, displaces reason and truth. This technique ought to be stopped, ought to be rejected by voters, by candidates, by political consultants—by all of us—as undemocratic. It undermines the essence of democracy, which is the triumph of truth.

The crowd that gave us Willie Horton, the crowd that invented the vicious, divisive, slanderous 30-second television political spot, is at it again. This time they exploit Judge Clarence Thomas for their sleazy purposes.

Negative, abusive, bullying, lying television ads are damaging and disgraceful, especially as America more than ever must set the shining example for people around the world who are grasping for the elements of democracy. We should not be teaching that the way to go is to fool the public.

The issue about Judge Thomas concerns his fitness to serve a lifetime on the Supreme Court. It is a serious and profound question, and Senators who must decide are obligated to give the question honest and studious attention. I am sure that they will.

The ads being run in support of Judge Thomas, without his consent and after his disapproval, are relevant only in that the reaction to them by Judge Thomas is relevant. I was disappointed that while he denounced them, Judge Thomas stopped short of demanding that this tactic not be used in his behalf.

I hope he will insist that his name not be sullied by association with scurrilous campaign techniques. Judge Thomas cannot do anything about personal attacks on himself except to rise above them, but he can demand that others not be attacked in his name, especially U.S. Senators who are charged by the Constitution to give sober consideration to his confirmation.

Last week, the Willie Horton crowd began placing television ads in North Carolina with false associations daring me to vote against confirmation of Judge Thomas.

My reaction to being assaulted by this sleazy crowd is simple enough: I do not take well to threats and bullying.

Those of us who are eastern North Carolinians have our faults, but one thing we do not do is back off from a bully.

I expect that they will be on my case again next fall. I'll be ready for them. I will make sleazy political campaigning an issue at every opportunity. American democracy deserves honesty and decency. That is a major issue because a candidate who embraces dirty campaigns will embrace bad government.

I will not vote on the basis of the underhanded techniques of these self-seekers. But I do believe that Judge Thomas' reaction to the ads will reveal something important in his character.

I hope that he will stand up in behalf of all Americans whose democratic processes are maligned and undermined by false, mean, or tricky attacks of distortion and prejudice. I hope he will issue his personal cease-and-desist order. It is a simple matter of manhood.

DON LAUGHLIN

Mr. REID. Mr. President, on September 26, 1991, Don Laughlin will be inducted into the Gaming Hall of Fame at a dinner coinciding with the World Gaming Congress and Exposition 1991. Don is being honored because he is a man of vision and a man of daring.

Many years ago, Don purchased a plot of undeveloped desert whose only claim to fame was its location across the Colorado River from Bullhead, AZ, the hottest place in America. Don, though, was a man who dreamed big, and he dreamed that this isolated, desolate patch of ground could someday be a grand oasis—a tourist resort where millions of tourists would flock annually.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

commitment of the fans to our team demand a commensurately vigorous fight to save the Mariners.

The time is short, the money and the skills are available, the occasion is important, and the time to start is now.

FOOTNOTES

[1]Comparative population data and major league baseball franchise information for the largest Consolidated Metropolitan Statistical Areas in North America:

United States rank	City	Population	Baseball franchises
1	New York	18,100,000	2
2	Los Angeles	14,500,000	2
3	Chicago	8,100,000	2
4	San Francisco-Oakland	6,300,000	2
5	Philadelphia	5,900,000	1
6	Detroit	4,700,000	1
7	Boston	4,200,000	1
8	Washington, D.C	3,900,000	0
9	Dallas	3,900,000	1
10	Houston	3,700,000	1
—	Toronto	3,600,000	1
11	Miami	3,200,000	(1)
—	Montreal	2,900,000	1
12	Atlanta	2,800,000	1
13	Cleveland	2,800,000	1
14	Seattle	2,800,000	1
15	San Diego	2,500,000	1
16	Minneapolis-St. Paul	2,500,000	1
17	St. Louis	2,400,000	1
18	Baltimore	2,400,000	1
19	Pittsburgh	2,200,000	1
20	Phoenix	2,100,000	0
21	Tampa-St. Petersburg.	2,100,000	0
22	Denver	1,900,000	(1)
23	Cincinnati	1,700,000	1
24	Milwaukee	1,600,000	1
25	Kansas City	1,600,000	1

[1]Indicates National League franchises awarded for the 1992 season.

Note.—Rank based on data compiled by the U.S. Bureau of the Census for "Consolidated Metropolitan Statistical Areas"; excludes Canadian cities. Population for U.S. CMSAs as of April 1990; for Canadian cities as of June 1990.

[2]The Tampa-St. Petersburg-Clearwater, Florida area has 500,000 fewer people than Seattle; its market is limited on the north by Atlanta, and will be limited on the south by the new Miami franchise.

Mr. DANFORTH addressed the Chair.

The PRESIDENT pro tempore. The Senator from Missouri [Mr. DANFORTH] is recognized.

Mr. DANFORTH. Mr. President, I would very much appreciate it if the Chair could tell me after I have consumed 5 minutes.

The PRESIDENT pro tempore. The Chair will so indicate to the Senator when the time has expired.

JUDGE CLARENCE THOMAS

Mr. DANFORTH. Mr. President, yesterday Judge Clarence Thomas concluded his 5 days of testimony before the Senate Judiciary Committee. It was, in my view—admittedly a biased view—a remarkable performance. For 5 days, Clarence Thomas sat before the committee answering many, many questions; judiciously, I think, declining to answer some other questions. Throughout the 5 days, he showed a consistent temperament, which will equip him well to serve on the Supreme Court.

One of the things that was truly remarkable to me was how much Clarence Thomas knows on a whole variety of subjects that are within the purview of the Supreme Court.

Here is a person, after all, who has spent most of the last 10 or 12 years not in the judicial branch but in the executive branch of government, dealing with one particular subject matter—employment opportunity. Yet he demonstrated a broad knowledge of matters that come before the Supreme Court.

Before the hearing began, Mr. President, all Members of the Judiciary Committee indicated that they had not made up their minds on how they would end up voting on Judge Thomas' confirmation, and that they would wait and see what happened at the hearings. I must say that it is difficult for me to understand how, on the basis of the 5 days of hearings, anybody who had previously decided to oppose Judge Thomas would oppose him. He did extraordinarily well before the committee and, rather than give people reasons for voting against him, in the opinion of this Senator, gave reasons for voting for him.

Some have said that the problem with the hearing was that Judge Thomas did not say enough. There certainly were times, particularly with respect to the question of the abortion issue, Roe versus Wade, when the judge simply declined to say how he would vote on a matter that would come before the Court. I think two things should be said in this regard.

The firet is that it truly is improper for a judge to say, in effect, if you vote for my confirmation I will vote such and such a way when I get to the Court. That approach would compromise the independence of the judge, and of the judiciary, more broadly. So I think it is necessary for a judge to decline to give the impression that he has made up his mind before the case even comes to the Court, before the arguments have been made, before the briefs have been written.

He stated that he had his mind open on the Roe versus Wade issue and he stated further that he had not expressed even a personal view on the subject. And a number of people said, how can this be? I can only say that I have known this man 17 years; he worked for me twice. I have talked to people who have worked with him, shoulder to shoulder over that 17 years. I have found nobody who knows or has heard Clarence Thomas express even a personal opinion on the subject of abortion. And I think, had he done so, that information certainly would have surfaced during the last 2½ months.

The judge has said that there is a difference in role between being a policymaker and being a judge. I think that that is manifestly correct. Those of us who are in the political arena have a whole array of political opinions or personal opinions about a wide variety of subjects. That is not to say that, if we were to become judges, we would do so with a view of trying to import those philosophical or political ideas into the judicial fabric of the country.

The essence of judicial conservatism is that a judge exercise restraint in imposing his views on the people of the country through the bench.

The PRESIDENT pro tempore. The Senator has completed 5 minutes.

Mr. DANFORTH. Mr. President, I thank the Chair.

I would add only this, the experience I have gone through the last 2½ months has been, to say the least, a fascinating experience. It was fascinating to have the opportunity, for example, to sit in on the Judiciary Committee on the other side of the table; fascinating to have the experience of visiting some 59 Senators in their offices, of getting to know colleagues in a different light, and of getting to know this man, Clarence Thomas, whom I have known for so long so much better. And I thought that I knew him well before this process started.

I am extraordinarily impressed by him. I think that most objective observers must be impressed by him, and I look forward to his confirmation by the Senate.

The PRESIDENT pro tempore. The Senator from Nevada, Mr. REID.

Mr. REID. Mr. President, I ask unanimous consent the Senator from Nevada be allowed to speak for 7 minutes. It would mean extending morning business by approximately 2 minutes.

The PRESIDENT pro tempore. The Chair hears no objection. The Senator's request is granted.

THE PHILIPPINES

Mr. REID. Mr. President, in the spring of 1942, as a tidal wave of disaster swept away Allied forces in Asia a flotilla of tiny boats crept south, away from the besieged island fortress of Corrigidore.

Even as those PT boats began what was to be the first steps in America's long trail back to the Philippines, thousands of American prisoners of war, together with their Filipino brothers-in-arms, walked another and even more difficult trek. They marched with death itself as their constant companion on the road from Bataan and Corrigidor to Japanese POW camps. Many would never come home, and of those who did, many were shattered in body or mind.

Even as he traveled to Australia, by small boat, and plane and later by train, there was one thought always in the mind of that man for whom those tiny craft had made their race against death itself. "I shall return."

The promise was Douglas MacArthur's, but it was also the promise of the United States of America. We promised to come back and liberate the

paid five years worth of lip-service to Clayton Yeutter and Carla Hills, while our "aggressive trade stance" has deteriorated to nothing more than a selective and reactionary way of doing business through the State Department. Some would say our policy amounts to "unilateral surrender."

Given this, we will have a farm policy debate next year, and, very likely, we need one. While such a debate would not likely impact your re-election, the stakes are high for Congressional Republicans. A high-visibility farm policy debate—pitting the Republican farm policy against the Harkin/Gephardt/Kerrey school of supply-management and isolationism—would fan the flames of populism and possibly reduce Republican strength in Congress.

In my view, there is time to turn this around. One way would be to announce by this October 1 that as a policy, beginning next June 1, the United States intends to implement across-the-board export subsidies for all customers and to stop idling productive land. In essence, assure farmers and ranchers that, if the GATT fails, your Administration will support them notwithstanding the added cost.

Farm policy will be a vital issue in 1992, and critical to the men and women of rural America who together keep the agriculture industry alive and provide one out of every five jobs in America.

Sincerely,

BOB DOLE,
U.S. Senate.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. BYRD. Mr. President, while the managers and staff continue to try to work out some amendments on which we can agree, I ask unanimous consent that the Senate stand in recess awaiting the call of the Chair but with the recess in any event not to extend beyond 2 p.m. today.

There being no objection, at 1:17 p.m., the Senate recessed, subject to the call of the Chair.

The Senate reassembled at 1:47 p.m., when called to order by the Presiding Officer [Mr. SHELBY].

The PRESIDING OFFICER. The Senator from Louisiana.

NOMINATION OF CLARENCE THOMAS

Mr. JOHNSTON. Mr. President, the hearings are not complete yet with respect to Judge Clarence Thomas. However, his extensive testimony, which has been about as extensive as anyone's who has ever testified on a confirmation before the Judiciary Committee, is complete. I believe we now have a rather complete picture of Judge Clarence Thomas.

Mr. President, based upon that picture, I will vote to support Judge Clarence Thomas for the U.S. Supreme Court. I believe he has shown himself to have the intelligence, the integrity, the background, the experience, the balance, in order to be able to do a good job as a Justice of the Supreme Court.

I believe the American Bar Association, who found him qualified, was correct in finding those qualifications. I believe he has exhibited a range of knowledge about the jurisprudence of this country, and I believe he has shown a real dedication to balance on the Court, particularly with an eye to the rights of minorities. So I believe we can safely and with some enthusiasm support Judge Clarence Thomas.

So I now make that statement, Mr. President, and I look forward to voting for him on his confirmation.

I yield the floor.

RECESS UNTIL 2 P.M.

The PRESIDING OFFICER. The Senate will stand in recess until 2 o'clock.

Thereupon, the Senate, at 1:51 p.m., recessed until 2:01 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. REID].

Mr. NICKLES. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The assistant legislation clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Nevada is recognized.

Mr. REID. I thank the Chair.

(The remarks of Mr. REID pertaining to the introduction of S. 1723 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. REID. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New York.

Mr. D'AMATO. Mr. President, I ask unanimous consent that I might proceed as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

AIR TRAFFIC CONTROL SYSTEM FAILURES

Mr. D'AMATO. Mr. President, just yesterday morning, while the Senate was considering the Transportation appropriations bill, both my colleague, the chairman of the committee, Senator LAUTENBERG of New Jersey and I, were requested to enter into a dialog, a colloquy with the distinguished Republican leader, Senator DOLE.

The subject of Senator DOLE'S concern is something that I have raised, that the Senator has raised on a number of occasions, and it concerns safety; it concerned safety in our skies and the inadequacy of the present telecommunications system.

Unfortunately, yesterday, at or about the same time, we experienced just how serious this situation is, how a blown fuse at AT&T's lower Manhattan switching station could cause a calamity, shutting down the Northeast and certainly all of New York, New Jersey, the airports, tens of thousands of commuters, stranding people on the ground for hours and creating a backlog at other airports.

The basic tenet of what Senator DOLE has been asking for and seeking is safety, the best system to ensure safety for the public. And that should come first. Unfortunately, that has not been the case. Unfortunately, we have a situation today where we are involved in a bureaucratic struggle as to who is going to determine which system governs the vital communication links that are so necessary with airports.

As I said, aircraft wee stranded on the ground for hours. Others were not permitted to land at area airports. Pilots had to switch to other radio frequencies. Controllers were left to use commercial phone lines subject to busy signals rather than the rapid long distance lines to reach other controllers. In short, air traffic was in chaos, and the public was at risk.

This was not the first time the vital air traffic control communications have been disrupted in recent times. This failure is the third major shutdown.

In January 1990 a computer program—software—failure resulted in a nationwide disruption of air traffic. In January 1991 a telecommunications worker accidentally cut a fiber optics cable in New Jersey, disrupting service. And yesterday's shutdown makes three serious disruptions to the air traveler as well as to other commercial activities. I say three strikes and you are out.

The FAA and the General Services Administration have engaged in a bureaucratic wrangling, interagency squabbling since May of this year over the question of whether the FAA should be exempted from mandatory participation in the Federal Government's telephone system, FTS–2000.

This may be arcane to some people, but it is real, live, practical, important, and it involves the safety of the public, which should come first. Unfortunately it has not.

The FAA has argued, and I think absolutely correctly, that it needs the most reliable system that it can get. I agree. How many more shutdowns do we need before a terrible tragedy occurs? We cannot wait until two Federal agencies stop their petty infighting to ensure the traveling public gets the safest air traffic control system.

It is with that intent that I offer legislation to resolve this matter once and for all.

When the Senate and House meet next in the coming weeks in the conference on the fiscal year 1992 funding bill on the Department of Transpor-

culture or in defense. And a failure to recognize this responsibility will only lead to further erosion of public support for the NEA. Those voices deserve attention, and it is the purpose of my amendment to see that they get it.

Thank you, Mr. President. I yield the floor.

Mr. BYRD. Mr. President, will the distinguished Senator yield?

Mrs. KASSEBAUM. I am happy to yield.

Mr. BYRD. Mr. President, I wonder if the distinguished Senator would mind adding my name as a cosponsor.

Mrs. KASSEBAUM. Mr. President, I would be very happy to add Senator BYRD, the chairman of the Appropriations Committee, as a cosponsor to my amendment.

The PRESIDING OFFICER. Is there further debate on the amendment?

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mrs. KASSEBAUM. Mr. President, I will be asking for the yeas and nays, but I do not believe there are enough Senators on the floor for a sufficient quorum in asking for the yeas and nays. I will do so at a later time.

The PRESIDING OFFICER. Does the Senator yield the floor?

Mrs. KASSEBAUM. I yield the floor.

Mr. CHAFEE. Mr. President, I ask unanimous consent that I might proceed for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

Mr. CHAFEE. Mr. President, as have many Americans, I have, during the past 2 weeks, listened when I could to the Senate Judiciary Committee hearings on the nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States. I found the hearings—in which were heard both testimony by Judge Thomas and views of panel witnesses—to be helpful in understanding who Clarence Thomas is, and how he may serve this country as a Justice.

There is little disagreement on the character and background of the judge. He is by all accounts a fair man, an honest man, and a good man. The story of his life, moreover, is truly an embodiment of all that we were taught as children about opportunities in America. It is an impressive background, and one that cannot be undervalued.

But there is more to being a Supreme Court Justice than being a good person. Thus, I paid careful attention to the hearings to find out more about how Judge Thomas views the Constitution, the law, and the court.

After listening to the judge and the various witnesses testify, I think it is fair to say that Judge Thomas falls into the category of conservative thinkers. Yet throughout his statements before the committee and his public statements as an official in the executive branch runs a streak of what might be characterized as a moderate—or, oft-times, even liberal—point of view.

And that is where I think his background does come into play, and does make a difference in the kind of Justice that he would be. I believe Judge Thomas when he says he will be open-minded with regard to the issues he is asked to decide on the Supreme Court. But I also believe that a judge, being human, can never fully shed him, or herself, of the influences that have shaped his or her life. In that sense, no judge can ever be fully neutral. And thus, I believe that given the influences that have shaped the life and character of Judge Thomas, we would not see an ideological judge, but one who understands what it is like out there, who understands, and will not forget, what it is like to be without resources, without help, and sometimes with little hope.

I believe that Judge Thomas will be an independent voice on the Court, neither leaning to the left nor bowing to the right, but instead choosing his own path. I believe that he will decide each case as it comes to him, with an open mind. And I believe that if he exhibits some of the fierce independence that he has shown throughout his life, he may surprise all of us, particularly those who might be tempted to try to categorize the judge's beliefs as part of one monolithic ideological point of view.

There are issues I care deeply about—separation of church and state; the first amendment freedoms of speech and expression; and the right of a woman to make her own choices about reproduction. Each of these issues will come before the Court in some form or another in the near future. I am pleased that Judge Thomas stated that there is a right to privacy, and that overturning a precedent should require more than simply finding its underpinnings to be incorrect. However, I still worry that a conservative thinker will change what I consider to be important and correct decisions on these issues. Yet, I would worry more about a conservative who has not been personally influenced in the way Judge Thomas has, and I would worry far more about an ideological conservative with an agenda.

As Dean Calabresi said during Tuesday's hearing, Judge Thomas' views have changed over time, and may change again in the future. His constitutional philosophy, as was the situation with certain of his predecessors, is not yet fully formed. I am persuaded that the combination of his willingness to listen without advancing an agenda, his background, and the influences that have shaped his character, and his independence, presages a judge who will grow on the Court, who will, as the dean said, be shaped by the cases that come before him even as he shapes the Court.

Therefore, Mr. President, I will be supporting the confirmation of Judge Clarence Thomas to be Associate Justice of the Supreme Court, and I will vote for his confirmation.

I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DEPARTMENT OF THE INTERIOR AND RELATED AGENCIES APPROPRIATIONS ACT, FISCAL YEAR 1992

The Senate continued with the consideration of the bill.

Mr. BYRD. Mr. President, I ask unanimous consent that the vote on or in relation to the amendment by Senator KASSEBAUM occur at 12:45 p.m. today.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1174

Mr. PELL. Mr. President, while I have the greatest respect for the Senator from Kansas and appreciate her thoughts about the National Endowment for the Arts, I believe that her amendment to reduce funds is not the appropriate way to address what problems may exist at the agency.

Senator KASSEBAUM was of tremendous help last year when we carefully reviewed NEA procedures. She worked with us and endorsed the numerous reforms that were eventually incorporated into the NEA's legislation.

I believe that we must give these reforms time to take hold. The Endowment has moved quickly to establish a series of procedural changes—all of which address the very valid concerns that many of my colleagues may have. But we must give them time.

In my view, it would be a more positive step if, as the chairman and ranking member of the Subcommittee on Education, Arts, and Humanities, we held hearings specifically on the NEA grant process. This would allow us to deal with the substance of the issues at hand and give us an opportunity to more fully understand what—if anything—still needs to be done.

It has been my intention to hold such a hearing but not until the current reforms have truly taken hold, which could be a period of time.

in the Ukraine, where he did not need security clearance at all.

Life at that factory was never easy for Mr. Sady, because he was discriminated against as a non-Ukrainian and as a Jew. After 11 years, in 1989, Mr. Sady left that job, and he has been unemployed ever since.

The Sadys applied to leave the Soviet Union for the United States in September 1988. The family planned to join Mrs. Sady's brother and sister, who live in Minnesota. The Sadys were refused permission to leave. The family reapplied 6 months later. This time, only Mr. Sady's father was granted permission.

In early 1990, they applied again, and this time all but Ovsey were allowed to emigrate. Ovsey was refused permission because his secrecy term had not yet expired. Yet, many of his coworkers at his original plant with higher security clearances were granted exit visas. Some current employees at the plant have received exit visas. Mr. Sady was told by the head of the Lvov OVIR office that his secrecy term would expire at the end of 1990.

In October 1990, Mr. Sady reapplied, only to be told by the Lvov visa office that he would now have to wait until 1995 for his secrecy term to end. He has not received any written information concerning the duration of his secrecy term.

Mr. Sady's family waits for him in the United States, and they are trying to build a life for themselves. His wife, son and father live in a small apartment near Minneapolis. Their principal means of support are a variety of different assistance programs. His son is a full-time student in Minnesota Community College, where he studies English, and Mrs. Sady attends community educational classes. They are trying to put down roots and start their lives anew, despite the gaping hole in their family. Mr. Sady's father is 83 years old, and he suffers from glaucoma and high blood pressure. Mrs. Sady also suffers from poor health.

Ovsey Sady is not well himself. He has stomach ulcers which have hospitalized him in the past, and he does not have enough money to follow his prescribed special diet. Unemployed and alone, Mr. Sady remains a hapless victim of unjust, unwarranted bureaucratic recalcitrance.

In the summer of 1990, President Gorbachev traveled to Minnesota. And while he dined with our Governor 10 miles away, Victor and Sima Sady were reminded of their loss by the empty chair at their dinner table.

The Helsinki accords, signed by the Soviet Union, state that "a family should not be separated" and special attention should be given to requests of an urgent character, such as the request submitted by an elderly or an ill person.

I urge the Soviet authorities, from the Senate floor today, to fulfill their obligation under these accords and permit the emigration of Ovsey Sady and others who were caught in the remnants of the cold war, which is over.

If my father were alive today, he would applaud the recent changes in the Soviet Union. He would be so excited. God knows, I wish he were alive today to see this. But I also know that my father, from his own experience, would worry about the resurgence of anti-Semitism, which is always there beneath the surface. And I know my father, while he would hope for the most from this transformation in the Soviet Union, would guard all of us agalnst the rise of discrimination and persecution of Jewish people. I feel very strongly about this.

Mr. President, in our enthusiasm for the global reunification of the East and the West, please let us not forget our obligation to assure the reunification of families like the Sadys.

Mr. President, I have sent letters to authorities in the Soviet Union. I have sent letters and made calls to our own Government.

Mr. President, I will send a copy of this speech to the Soviet Ambassador, and I will meet with the Soviet Ambassador if I travel to the Soviet Union in December, as I hope to. One reason to go to the Soviet Union is to do everything I can to bring the unification of this family.

It is important to speak from the Senate floor today about the Sady family. It is a call to conscience. This speech will not be the end of it. I hope that as a son of a Jewish emigrant from the Soviet Union, I hope that as a Senator from the State of Minnesota, I can help to bring together this family.

Mr. President, I yield my time.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

NOMINATION OF CLARENCE THOMAS

Mr. ROTH. Mr. President, I am pleased to announce at this time my decision to vote in favor of the confirmation of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court. As the exhaustive hearings before the Senate Judiciary Committee come to a close, the record is clear: Judge Thomas has the judicial temperament, the intelligence, and the integrity to serve on the Supreme Court. And I believe he will serve with distinction.

Throughout the days of testimony before the committee as well as during his tenure on the Court of Appeals for the District of Columbia Circuit, Judge Thomas has steadfastly adhered to the only theory of constitutional jurisprudence compatible with representative government. He believes that the function of the courts created by our Constitution is to interpret the law as written and not to read into the laws the judge's own personal views. While Judge Thomas is an adherent to natural law doctrine, he has made clear that the only function of natural law in legal analysis is to clarify the meaning of constitutional or statutory provisions written by lawgivers—lawgivers who themselves intended to codify natural law applications. That view is hardly evidence of any incipient judicial activism in Judge Thomas.

I am confident that Clarence Thomas' service in both the Reagan and the Bush administrations will help him as a Supreme Court Justice to understand the importance of judicial deference to the political branches. Likewise, I am confident that Justice Thomas will serve the Supreme Court with the same earnest dedication to its mission as he has shown in his service in both the executive and judicial branches.

If any lesson is to be learned from reviewing the life and work of Clarence Thomas, it is that his independence and impartiality are unquestioned. There is absolutely no doubt that Clarence Thomas is his own man. I am therefore extremely pleased that the President has nominated Clarence Thomas to be a Justice of the Supreme Court and believe that the Senate will soon confirm him to serve for decades to come. His open mind and spirit make him an extremely good selection.

Clarence Thomas was born in the deep South and lived his early days under a regime of segregation. Courageously, he persevered through trials and tribulations that most Americans will never experience. Through it all, he learned to think for himself. As the victim of segregation, he was as dedicated to the goal of equal rights as anyone could be. Yet he was no ordinary black man. He did not join the liberal establishment. No, his independent spirit and open mind led him to question and then to reject that establishment's views on how minorities can succeed.

Quite frankly, that is why there is any controversy at all in this nomination. A role model has risen to the highest Court in the land, a role model who does not think and talk the liberal lingo. No one in America denies a white person the right to be a liberal or a conservative. No one views a white person as unrepr sentative of his or her race on the basis of political philosophy.

Before Clarence Thomas was nominated, blacks were not truly free to be independent thinkers, like whites. But now it is different. A civil rights revolution has occurred. Over a century ago, blacks won their physical freedom. In this century, blacks began an ongoing battle for economic freedom. But it was not until this summer that the shackles of intellectual confinement were cast aside.

Mr. President, I am not alone in these observations—especially given

his excellent performance in the hearings. In a letter I recently received from one of the most distinguished African-American leaders in my home State of Delaware urging me to support Judge Thomas, Senator Herman M. Holloway, Sr., stated that while originally he did not support the nomination of Judge Clarence Thomas given early media accounts, he concluded, after Judge Thomas finished his testimony, that he responded to all questions with clarity and thoughtfulness. He impresses me as one who possesses a judicial temperament, unquestioned integrity and sensitivity, and is a fiercely independent thinking individual whom I believe will approach all decisionmaking with impartiality. As an Afro-American citizen who has been privileged to serve in both Houses of the Delaware General Assembly, including 28 years in the Delaware State Senate, I can appreciate the process of intense scrutiny that each Presidential nominee must undergo. As that process evolved—I became convinced that Judge Thomas is a very able and competent individual conditioned by his background, training and experience and one whom all citizens in this country can trust to fairly and impartially interpret and apply the law.

Clearly, the nomination of Thurgood Marshall made history. But it is the nomination of Clarence Thomas that has won for blacks intellectual equality in the political arena. And that is very significant, not only for the Supreme Court, but for all Americans.

Thank you, Mr. President. I yield the floor and yield back the remainder of my time.

Mr. ROCKEFELLER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from West Virginia.

Mr. ROCKEFELLER. I thank the Presiding Officer.

CHILDREN'S HEALTH CARE PROBLEMS

Mr. ROCKEFELLER. Mr. President, I was glad to hear my colleague from Tennessee, Senator GORE, take the floor the day before yesterday to protest President George Bush's use of the Grand Canyon as a prop to project the illusion of concern for our environment, I rise today to protest an equally outrageous press stunt that took place later that day.

I speak of George Bush's visit to the Primary Children's Medical Center in Salt Lake City.

Mr. President, the United States has a Third World infant mortality rate—22d in the industrialized world. Ten thousand children die needlessly, and another hundred thousand are crippled, every year, because they have no access to the treatments and technology that would save them. Last year, we had a measles epidemic that struck 25,000 people, mostly children. Our immunization rate is lower than Peru's or Nicaragua's. In some cities, only half our preschoolers get the shots they need to protect themselves from diseases we'd almost forgotten exist. Polio, diphtheria, and whooping cough are back—killing kids.

George Bush knows we have a problem. His Health and Human Services Secretary, Louis Sullivan, admits it. The White House Task Force on Infant Mortality he appointed, told him. And in 1988, George Bush promised to act to solve it.

And now that the next campaign is upon us, George Bush has acted—he has embarked on a media tour, cynically using sick children as props, pretending as though children's health care had suddenly become one of his priorities.

If videotape could be turned into vaccine, George Bush might save some lives, but until then he's just another politician with a campaign agenda and no plan for change.

President Bush claimed in Salt Lake City to have asked Congress for $57 million to fund a demonstration Infant Mortality Program—and received only half of his request. What he didn't say is that those funds would have been taken from community health clinics across the country, leaving millions of other Americans without medical care—robbing Peter to pay Paul. Congress saved the community clinics, and began the Infant Mortality Program. George Bush has never come to Congress with a plan designed to reach more than a quarter of the children who need our help.

His own White House task force wrote a report calling for a comprehensive approach, using existing knowledge to save thousands of lives—and billions of dollars. But, after appointing the Commission with much fanfare, he refuses to release their report. Their findings just aren't consistent with the Bush agenda of world travel and domestic neglect. Just like the old CIA Director he is, George Bush seems to have stamped the report "Top Secret" and turned children's health into a covert operation. He has even continued Ronald Reagan's policy of not bothering to collect data that show how many kids are not getting their shots.

But George Bush cannot cover up the fact that an unconscionable number of American babies die every year—that need not have died—and that they will continue to do so until we take bold action. He cannot ignore the fact over 8 million of America's children have no health insurance whatsoever—they don't go to the doctor when their temperatures hit 103, they can't afford vaccines that cost 10 times what they did when Reagan was sworn in. Our failures in their first years cost them lifetimes of illness and pain.

For 10 years, we have been hearing the same tired rhetoric about helping children. Now George Bush wants us to watch it on TV. But the sad fact is that the President's commitment to saving children's lives does not include rearranging his priorities to put children at the top of the list.

George Bush may claim to be the "Environmental President." He might call himself the "Education President." But as long as I am able to speak and act; as long as hypocrisy, not healing, dominate his approach to children's health; as long as babies are dying needlessly, I will never allow George Bush to claim the title "Health Care President."

The ACTING PRESIDENT pro tempore. The Senator from Washington is recognized.

Mr. ADAMS. I thank the Chair.

(The remarks of Mr. ADAMS pertaining to the introduction of S. 1730 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The ACTING PRESIDENT pro tempore. In his capacity as Senator from South Dakota, the Chair recognizes the absence of a quorum. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,379th day that Terry Anderson has been held captive in Lebanon.

ADDRESS OF BORIS YELTSIN AT NEW YORK UNIVERSITY

Mr. MOYNIHAN. Mr. President, the extraordinary events of the last several weeks in the former Soviet Union have drawn international attention to Boris Yeltsin, the President of the Russian Republic. I believe, therefore, the Members of the Senate will find of particular interest the text of a major address delivered by Mr. Yeltsin at New York University on June 21, 1991, only a few days after his election.

Mr. Yeltsin was introduced on this occasion by the president of New York University, our distinguished former colleague in the House of Representatives, Dr. John Brademas.

I ask unanimous consent that the transcripts of Dr. Brademas' introduction and an English translation of Mr. Yeltsin's speech be inserted in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

the purpose, goals, countercyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the unemployment compensation system, and make recommendations for improvements.

Finally, like the earlier bill passed by the Senate, this bill provides for using the "emergency" authority provided in last fall's budget agreement rather than following the rules for "pay-as-you-go." As a participant in the budget negotiations last fall, I hold the view that this emergency authority was established precisely to enable the Congress and the President to respond to the kind of situation we face today.

When we were negotiating the 5-year budget agreement last October, it was far from clear that this recession would inflict the high degree of financial distress on American workers that has subsequently occurred. More specifically, we did not anticipate that the Nation's unemployment compensation program would prove to be as unresponsive to the needs of long-term unemployed workers as has been the case. As I pointed out earlier, the number of workers who have exhausted their regular state benefits without qualifying for any additional weeks of extended benefits has reached a historical high.

Many of us were greatly disappointed that the President did not choose to use the emergency authority and release the trust funds that have already been collected to pay these benefits. I have no doubt that the President was being advised that he would shortly have new labor market numbers that would justify his position.

But the lack of improvement over the last month should give him pause. As the senior financial economist for DRI/McGraw Hill commented last week:

"The recovery is progressing but slowly. It still has a ball and a chain on its foot."

Mr. President, this ball and chain is causing enormous pain for American workers. For unemployed parsnts in Port Isabel, Texas, or Jackson, Michigan, or anywhere else in this Nation who can't pay the mortgage, or meet the car payments—this is a time when they expect their government to respond, to help them through a period of recession for which they bear no responsibility. When the economy recovers these workers will be back at the job, contributing to the economy and paying taxes like everybody else. But for the short term, they need our help.

Last month the President was hearing rosy projections. But he knows now those rosy projections weren't true—at least they didn't materialize in time to help the unemployed workers who are exhausting their benefits at the rate of more than 300,000 a month.

I hope fellow Senators—Democrats and Republicans alike—will join together in support of this bill. There are millions of unemployed workers and their families who need our support. And they need the support of the President of the United States.

We cannot turn our backs on these hard-working Americans. We've seen the new numbers. We—and the President—can have no illusione. We can repair the Nation's broken unemployment compensation system, and pay the benefits. Or we can sit back, say we're sorry, but do nothing to help workers get through this period of severe strain for them and their families.

Mr. President, I think the Congress has no choice but to act. And given what is happening in the economy, I believe the President will be obliged to join with us. The essential well-being of millions of Americans rests with this bipartisan legislation.

I understand the President is concerned that this bill may be but the first of a series of bills that the Congress will try to move under the emergency authority provided in last fall's budget agreement. But the President, after all, is not a helpless bystander in this regard. He hae the ability to choose. He has the power to sign, or not sign, any bill that comes to his desk. And he has shown in the past he is willing to use the power of the veto.

I would agree that the circumstances in which the emergency authority is invoked should be rare, and the decision to invoke it should not be taken lightly. I for one did not take it lightly when the President asked the Congress to use the emergency authority on behalf of the Israelis, the Turks and the Kurds. And I would note that this is the first and only time the Congress has taken the initiative in this regard without the President's prior concurrence. But in this case I believe extraordinary action is warranted.

Mr. President, I hope the Congress and the President will be able to move forward together, and enact this legislation as promptly as possible.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. WARNER. Mr. President, for some time now the Senate has had under consideration before the Senate Judiciary Committee the President's nomination of Judge Thomas to become a member of the U.S. Supreme Court. During this period, the American public has had the opportunity to observe the Senate performing its constitutional responsibilities, and to observe and hear Judge Thomas as he replied to intensive, fair, and objective questioning by the members of the Senate Judiciary Committee, and also to observe the free exchange of views by concerned citizens for and against Judge Thomas.

I was pleased to be among those Senators who introduced Judge Thomas to the committee. He resides in Virginia and I have come to know him personally and professionally over the past few years.

Mr. President, I readily acknowledge that this nomination has been another very valuable learning experience for this Senator. I had the opportunity during the summer recess to travel extensively in my State, listening carefully to the views of the widest possible across section of Virginians. In the major metropolitan areas, I was able to host luncheons attended by primarily, minorities, and to listen to them behind closed doors where they felt the atmosphere and the circumstances enabled them to freely share with me their deepest feelings about this nomination.

Indeed, it was a troublesome nomination in its early days following the President's nomination. As time went on and there was a greater dissemination of knowledge, and particulary after Judge Thomas addressed the Judiciary Committee, I detected a clear lessening of the concerns directed against the nominee. But it was a valuable experience for me. Because face-to-face meetings, when all are present and free to share their views, are indeed the most productive.

I want to commend the Judiciary Committee. It will be winding up its hearings this afternoon, so I am informed. And as a direct result of the work of these Senators, the chairman and the members of the committee, again in a fair and objective manner, and as a direct result of the views expressed by a number of witnesses who have come forward, America now knows Judge Thomas much better.

We are in a position to come to this floor and actively agaln participate in the process. It is a three-stage process. The first stage is the Presidential decision, which he has a clear right to exercise under article II. The Constitution gives the President the authority to pick those who are his closest advisers and also to pick those who are to sit as members of the Federal judiciary.

Many times I have gone back to read the history of the Founding Fathers and how they struggled with this concept of checks and balances to overcome the harshness and unfairness of the monarchies that existed throughout the world at the time that our Constitution was brilliantly put together. And this is perhaps the most important check and balance.

Article II gives to the President the power to select members of the executive branch and the Federal judiciary. Then, in the same article, it charges the Senate—not the whole Congress, but the Senate—with the responsibility to give or not give their consent to the nomination. And we are now concluding the factfinding part of the process. Not only has the committee received a great deal of information, but individual Senators, through their correspondence and through their travels like this Senator, have independently received, I think, information which is of equal value and equal importance to that that has been brought before the Judiciary Committee.

The details of Judge Thomas' childhood, of his early struggles, bring to light a chapter in the history of our country which today all of us find very troubling.

I am several years older than Judge Thomas and I remember as a young person the prejudice that existed

against minorities. I served in the latter part of World War II in the Navy, and I recall very distinctly the first night on reporting to the recruit depot at 4 or 5 o'clock in the morning. We walked into a hall and instantly it was clear that segregration existed there. I am pleased to have the opportunity today, as a Member of this body, to work with every single Member in this body to do what we can to remove that prejudice that regrettably still exists in our country.

I look forward to the debate which I hope the Senate will undertake, and I understand is now tentatively scheduled, on the civil rights legislation. I think that it is imperative that the Congress of the United States, working with the President and members of the executive branch, reconcile the differences that exist today between these two branches of Government on this key legislation. We have an obligation to our country to meet that challenge, make those decisions, reconcile those differences, and pass a bill this fall that can be accepted by the President of the United States. I personally do not want to see that issue or those issues that are integral to the civil rights legislation be the principal points of contention and debate in the Presidential election, and the senatorial elections, and the elections for the House, in 1992.

The struggles that Judge Thomas faced, and his ability to overcome that prejudice, indeed will shape his views. I have met with him on several occasions. I have listened to his testimony. I have studied his record. And all of that knowledge assures me that he, as an individual, will not turn his back on the lessons learned in early life and, indeed, he will be among the forefront as a fighter on the Court to remove prejudice and racism from our country.

In summary, I have likewise given equal weight and equal time and attention to those who I respect, and those who fervently oppose this nomination. But under the Constitution they have a special burden; they must produce for the Senate, for the American public, a body of evidence, a body of fact on which the Senate can then base its determination to overturn and reject the decision of the President under article II. In my judgment, I say most respectfully, the opponents have not met that burden. Consequently, when the nomination comes to the floor I will actively participate in that debate. I will be an advocate for Judge Thomas. And I intend to vote for Judge Thomas at the conclusion of our floor debate.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. Mr. President, are we in morning business?

The PRESIDING OFFICER. We are in morning business.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCONNELL. I thank the Chair.

(The remarks of Mr. MCCONNELL pertaining to the introduction of S. 1731 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. MCCONNELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS-CONSENT AGREEMENT—H.R. 2521

Mr. INOUYE. Mr. President, I ask unanimous consent that the Committee on Appropriations be permitted to file its bill and report on the DOD appropriations bill tonight.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1991

The Senate continued with the consideration of the bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that at 9 a.m. on Tuesday, September 24, the Senate resume consideration of the unemployment insurance bill, S. 1722, and that at that time Senator DOLE be recognized to offer an amendment to S. 1722; that the time between 9 a.m. and 11 a.m. on that day be for debate on Senator DOLE's amendment, the time to be equally divided and controlled in the usual form; that at 11 a.m., the Dole amendment be laid aside until 7 p.m. on that day; and that at 11 a.m. Senator GRAMM, of Texas, be recognized to offer an amendment for himself and for Senator WALLOP and others; and that the time between 11 a.m. and 12:30 p.m. be for debate on that amendment with the time to be equally divided and controlled in the usual form; that at 12:30 p.m. the Senate stand in recess until 2:30 p.m., in order for the two party caucuses to meet; that at 2:30 p.m. the Senate resume consideration of the Gramm-Wallop, et al., amendment; and that the time between 2:30 and 3:30 p.m. be equally divided and controlled in the usual form; and that at 3:30 p.m. the Gramm-Wallop, et al., amendment be laid aside to recur immediately following the disposition of the Dole amendment; that at 6 p.m., there be 1 hour of debate equally divided and controlled in the usual form on the then upcoming votes; and at 7 p.m., the Senate proceed to vote on or in relation to the Dole amendment, to be followed immediately by a vote on or in relation to the Gramm-Wallop, et al., amendment.

The PRESIDING OFFICER (Mr. WELLSTONE). The Chair hears no objection. Without objection, it so ordered.

Mr. DOLE. If the majority leader will yield, I add that in that period between 3:30 and 6 p.m., it is possible there might be additional amendments that we could debate at that time. There may not be additional amendments, but if there are, hopefully they can be debated at that time, and the votes can follow the vote on the Gramm amendment, if we can work that out.

Mr. MITCHELL. Mr. President, that is not only agreeable, but desirable. I have stated previously, following discussions with the Republican leader, that it is my hope and intention that the Senate will complete action on the unemployment insurance bill by the close of business on Tuesday. If there are to be additional amendments, it would be helpful in that regard if they were offered during that time period, debated during that time period, and then the votes stacked, as the Republican leader suggests.

If there are not to be any further amendments, as discussed by the Republican leader and myself last evening, it is my intention to return to the DOD appropriations bill in the interim period so as not to have the Senate inactive during that time and to make such progress as we can. Although it is not mentioned in this agreement, pursuant to a prior agreement on Monday, September 23, the Senate will take up and begin consideration of the DOD appropriations bill.

Mr. President, accordingly, as a consequence of this agreement, Senators should be aware that the next rollcall vote will occur at 7 p.m. on Tuesday, September 24.

That will be on the Dole amendment to the unemployment insurance bill and that will be followed immediately by a vote on the Gramm-Wallop, et al., amendment to the unemployment insurance bill. That is a vote on or in re-

that term continues to be brought up. Ronald Reagan served this country in a splendid way, with great honor and great honesty. He is no longer here. So Reaganomics surely cannot be the so-called problem. I think we should finally give that up now. For some reason, it did not work to defeat him. It did not work to defeat George Bush. So maybe we can pass on from that.

But I will tell you what was happening during Reaganomics. I was here all during the 8 years. The President would submit a budget. It would quickly be addressed as being dead on arrival, as not responsive to the American public, as ugly and mean-spirited and terrible and evil. And that he was surely out of touch with America.

Then what would happen? It would go down to our sister body, the House of Representatives, our equal body. They would have hearings in a cursory fashion and just build up every single program 10 or 20 percent; add that to every single budget item and ship it down here and say, "There, try that. Ha, ha. Have a good go. And we are doing serious things."

Yes, they were doing serious things, just plunging us ahead into a $3.5 trillion debt. That debt was not created by Ronald Reagan or George Bush. They do not get a single vote, and they never did. They get to veto. We get to override. We get to sustain.

Everything done fiscally in the United States has been done and initiated at the House of Representatives, which seems to have been controlled by Democrats longer than the mind of man.

That is how this happens. Kill the President's budget. Whoop it up over there so you can be popular with every clinging, clawing interest group; ship it over here, and hope the poor Democrats and Republicans in this body will grapple with it some way to make sense of it—which we usually do, and usually in a bipartisan way. That is what is happening in America.

Let no one wonder what this is. It is not complex. It is not complex at all.

So maybe we can get away from hearing about Reaganomics, that old tired saw, and "what is this President doing for America?"

I will tell you what he is doing for America. He proposed a Clean Air Act that had a chance of passing, for the first time in decades, thanks to good Democrats and Republicans. We did an Americans with Disabilities Act. We had not done that before, and 41 million people now have access to public and private facilities they never had before.

We did a child care bill, which had not been addressed in this country, and we did that. We have done a lot, domestically, in the United States. It just happens it does not happen to match the domestic agenda of liberal Democrats.

I know that is a curious thing, a hard, harsh thing to say. But nevertheless, this President is fully aware of what has to be done domestically in this country, and more importantly, he has done it. And this Dole substitute is a classic example of how to do it. Let us do something realistic; stay with the same tier system; stay with the same definition of unemployed; pay for it and use the pooled resources to do that.

I know the frustration level is obviously at flood tide for those on the other side of the aisle, especially with regard to running for President. It is nearly the end of September, and we have not yet had the race.

In previous years, we have had not only the race, but the jockeys have been up and their silks have been on, and the infield prepared, and we have been galloping for months prior to this time. That was in previous years.

It is tough to get people to run against an honest, decent, direct, frank U.S. President, with a spouse that is surely one of the greatest role models of the United States. That must be tough for them. I understand that frustration level. It must be a burning, tough time.

But that is no reason to use this issue to somehow say that this President is mean-spirited and will not provide something for the American worker, or to say that because George Bush does not like some of the proposals with regard to the so-called civil rights legislation, he is somehow racist; or to say that George Bush, in discussing recent issues regarding Israel in quite an honest fashion and for those of us who have strongly supported Israel through the years to be faced with the unfounded allegation that he is somehow anti-Semitic. These things trouble the American people.

I have been sitting in the Clarence Thomas nomination hearings. I have been there for days. It is a tedious process in some ways because oftentimes the extremists on both sides of every issue control the national dialog, and the people who suffer are the citizens, the middle people, the middle thinkers, the moderate thinkers.

Our respective leaders have presented us with the upcoming agenda. I think it is fair. The majority leader, GEORGE MITCHELL, and our party leader, BOB DOLE, work well together in this body. And that is to our benefit. They presented an agenda which has some of the things we very much want.

I think several Members of our party said we are not going to stay here just to do the other party's agenda, and see how many embarrassing votes we can be faced with. That is not what are here for, and we will not be part of that. And I do not think that is to be foisted off on us, and we will be watching carefully if it is.

But what is wrong with helping put the world order together? What is wrong with seeing peace come to parts of the world that we never dreamed in our lifetimes could occur?

What is wrong with helping the world get settled down? I think the finest thing a government can give to its people, of all things, is peace, and this administration has worked on that in the most dazzling and brilliant fashion. It is finally coming to fruition around the world. Once we get that settled down and do what part we can without breaking our own bank, and we are not about to do that, then we, indeed, will have the domestic resources to go forward. What we do not have is the ability to just watch a bill pass with no ability to fund it and just add it to the $3.5 trillion indebtedness we have right now.

So perhaps we can go forward. I look forward to certainly working with the leadership on both sides of the aisle to meet that agenda. I pledge to do that. But hopefully we can stay away from the ancient litany of Reaganomics. Most of the figures we get that point the negative picture of the Reagan Administation start in 1979. He was not even here. I do now know how you can blame anything that happened with regard to this fiscal decline on something that happened when he was not even in office. But to blame it on a President who does not even get a vote is the height of absurdity, and the American people, I think, have that pretty well figured out.

The little bit of fiscal discipline can start to take place down there. When it does, the American people will be the beneficiaries. We will do a bill. It will not be a political ploy. It will not be a gimmick. It will not be wired to see that it goes off under the Republicans' chair. If we spent all of the time figuring out how to do legislation for the good of the American people instead of watching staff figure out how to diddle the other side or lay the snares, or do this little trick, or put this little paragraph, or slip in this little slider, we could get the Nation's business done.

I commend our colleagues who are working on that program to see what we can do to make the system work, and we have a bipartisan group working on that. I commend them, and I will dedicate some of my energies to that. With that, I yield the floor.

ORDER OF PROCEDURE

Mr. RIEGLE. Mr. President, I ask unanimous consent that at the conclusion of the remarks by our distinguished colleagues, Senator SPECTER and the Republican leader, the Senate stand in recess as under the order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair. Mr. President, I have just come from

the hearings on the nomination of Judge Clarence Thomas for the Supreme Court of the United States, which concluded about 10 minutes ago. As it is my custom, I have withheld taking a position on the nomination until the hearings have been concluded. I have been asked, as is the practice for inquires to be made of Judiciary Committee Senators, what my position would be, and I have declined to comment because I think it is important not to make such a determination until all of the witnesses have had an opportunity to testify because, as a matter of basic courtesy, if a mind is made up and a position is announced, it is difficult to respectfully address witnesses.

But the hearing is now completed. Rather than await an opportunity to have a polished, perhaps written statement, I think it is most appropriate to state my position, which I am about to do.

I support Judge Thomas for confirmation because he is intellectually, educationally, and professionally qualified. He will bring an important element of diversity to the Court. His previously stated opposition to following congressional intent is insufficient, in my judgment, to deny him confirmation.

The proceedings as to Judge Thomas have been highly charged and highly contested. Earlier today, going into the afternoon, there was a very distinguished panel speaking in opposition to Judge Thomas. In the course of that particular exchange, Ms. Eleanor Smeal raised a contention as to process, quoted Newsweek magazine as calling the Judiciary Committee proceeding a charade, and asked our committee to reject Judge Thomas because of his refusal to accord appropriate rights to women and minorities.

In my opinion, Mr. President, our procedure in the Judiciary Committee and in the Senate could be improved, but I believe that we have made significant advances in terms of inquiring into the background and philosophical approach of a prospective Supreme Court Justice and in eliciting information.

Since this country was founded in 1787, no nominee even appeared before the Judiciary Committee until Prof. Felix Frankfurter did so in the late 1930's. It is said that nominee William O. Douglas was waiting outside the Judiciary Committee to see if they had any questions, and there were no questions. In the early 1960's when Justice White was before the Judiciary Committee, it is said that only eight questions were asked of him.

I know that in the almost 11 years that I have been in the Senate and the seven nominating procedures that I have been a party to, I was grossly dissatisfied with the nomination of Justice Scalia because he answered no substantive questions at all. Following that proceeding, Senator DECONCINI and I were in the process of preparing a resolution to call for a Senate definition on what a nominee should answer. Before that work could be completed, we had the confirmation hearings for Judge Bork. At that hearing, a pattern was established requiring that the nominee answer fairly specific and extensive questions into his judicial philosophy.

So that I believe we have come a substantial way, but I do believe that we have a way to go yet. I personally believe that it is vastly preferable for Judiciary Committee, members not to take positions until the hearings are over, and that the better practice is for all Senators to await the floor debate. But in our body, the decision on how each Senator responds is a matter for each individual Senator's judgment. Of course I respect that.

Mr. President, a further problem, however, is that some Supreme Court nominees answer only as many questions as they have to in order to win confirmation.

When we had the confirmation hearing of Chief Justice Rehnquist in 1986, I pressed him on the issue of taking away the jurisdiction of the Supreme Court in constitutional cases and Chief Justice Rehnquist responded that he thought that was an inappropriate question to answer because the issue might come before the Supreme Court of the United States.

Overnight, I found a fascinating article written by William H. Rehnquist when he was a practicing lawyer in 1958 and which appeared in the Harvard Law Record. Then lawyer Rehnquist chastised the Senate for asking insufficient questions of Justice Whittaker, whose nomination hearings had concluded shortly before he wrote the article. And lawyer Rehnquist said that the Senate had a duty to inquire on questions of equal protection of the law and due process of law.

When I reminded Chief Justice Rehniqust at his confirmation hearings of what he had written many years before, Chief Justice Rehnquist said he thought lawyer Rehnquist was wrong but then proceeded to answer questions, to at least a limited extent, saying that he believed the Congress did not have the authority to take the jurisdiction of the Court on first amendment issues. But he would not answer the question as to whether jurisdiction could be taken from the Supreme Court on fourth amendment or fifth amendment questions, and also declined to answer why he felt there was a distinction between the two.

But we have seen the process evolve, Mr. President, so that Judge Bork answered extensive questions, as did Justice Kennedy and Justice Souter. Judge Thomas, too answered a great many questions, although he declined to answer some questions.

Judge Thomas answered questions in some detail on the establishment clause of the first amendment, saying that he thought there should be a wall of separation between church and State, an idea first advanced by Thomas Jefferson and a very important doctrine.

He answered questions on the free exercise clause relating to the case of Smith versus Oregon where there was a new lower standard imposed by the Court, below the strict scrutiny standard traditionally used for analyzing governmental intrusions on the free exercise of religion. Judge Thomas said that he agreed with the dissent by Justice O'Connor, preferring the strict scrutiny test, which is, I think, a fair reading of his testimony, although I do not have it before me.

He answered fairly detailed questions on stare decisis, stating that he thought the dissenting opinion of Mr. Justice Marshall was the preferable one in Payne versus Tennessee.

He responded to a question on the death penalty. Many may not like to answer, but he responded to the question.

On the issue of privacy, he commented that he supported marital privacy and a single person's privacy as found in the Eisenstadt versus Baird case. He also stated that he agreed with the validity of the three-part equal protection clause test for discrimination claims.

Many questions he did not answer. He would not answer regarding Bower versus Hardwick and privacy rights for gays and lesbians. He would not respond to the Rust versus Sullivan case, and he would not talk about the validity of victims' impact statements in the sentencing phase of death penalty cases. And most specifically, he would not respond to a question on whether he would overrule Roe versus Wade. That question, of course, is the most divisive issue, the most divisive question to face this country since slavery.

It is my judgment, Mr. President—and Senators differ on this—that it is not appropriate to compel or press nominee to answer any question. My view is that the Senate ought to compel an answer to that question because the case ought to be decided in a specific factual context where there are briefs, arguments, and deliberation among the Justices, and then a final decision is made in the context of a specific case.

There have been a number of witnesses who appeared before the Judiciary Committee, and I would again refer to the testimony of Ms. Eleanor Smeal, who was very powerful witness, as was Ms. Molly Yard, and many others who appeared on both sides.

The hearing was really filled with a lot of emotion, with five African-Amer-

ican Congressmen appearing yesterday and denouncing Judge Thomas as not upholding civil rights and for his views on affirmative action; and others appeared from the African-American community speaking very forcefully on his behalf.

I asked Ms. Smeal directly the question about whether she thought Judge Thomas should state whether or not he would have voted with the majority or the minority on Roe versus Wade, looking to a direct response on that question. And Ms. Smeal responded that she thought he should.

Such critics argue that Judge Thomas really ought to state that he would uphold Roe versus Wade, which I think is unrealistic for a nominee to be pressed to that position, just as I think it is unrealistic to expect the President to appoint someone who is committed to uphold Roe versus Wade in light of what the President's position has been on that issue.

The President has submitted Justice Souter, who did not state a position, and notwithstanding Judge Souter's vote in Rust versus Sullivan, at least in the mind of this lawyer/Senator, I do not think Justice Souter has foreclosed himself on Roe versus Wade. Judge Thomas was explicit in describing his conversations with President Bush, and they did not include any discussion about how Judge Thomas stood on any issue.

Mr. President, I am concerned about the Supreme Court being a super legislature and the Supreme Court exercising a policy judgment. I expressed deep concern about that question to Judge Thomas in terms of where the Court has gone, and specifically on his own position based on his own writings.

In my view—and I think this is a unanimous view on the Judiciary Committee, certainly one articulated very strongly by Senator THURMOND—the Court is supposed to interpret law, not to make law. And yet we have seen—and I only cite two cases because I note my distinguished colleague from New York and my distinguished colleague from Colorado have come to the floor—that in the case of Griggs, the Supreme Court made law. We had a decision by a unanimous Supreme Court in 1971 written by Chief Justice Burger, a conservative judge, stating a position regarding the burden of proof in cases involving title VII of the Civil Rights Act of 1964. Eighteen years later, in Wards Cove, the Supreme Court made new law; a new law was made by four U.S. Supreme Court Justices who placed their hands on the Bible during the course of the past 10 years and swore not to make law but only to interpret law.

Similarly, in the case of Rust versus Sullivan, there was a provision in a 1970 law prohibiting abortion as a means of family planning in federally funded clinics. Then a regulation was issued by the Secretary of Health and Human Services saying that counseling regarding abortion was permissible. That stood for 17 years until 1987 and a new regulation was issued. That regulation prohibited a doctor from even informing his patient or from speaking to his patient or from responding to a question from his patient on the subject of abortion. The Supreme Court upheld that in Rust versus Sullivan, assigning a number of reasons but one of them was a change in public attitude.

On questions of that sort, Mr. President, I believe that it is established doctrine that it is the intent of Congress at the time the law is passed, and that intent is then amplified by the regulation. And when the Congress allows that regulation to stand for 17 years, it seems to this lawyer/Senator that there is a strong presumption, really a conclusive presumption at that point, that that is congressional intent.

The concern that I expressed in the hearings and repeat here today is that we have a revisionist Court. We do not have a Court which is only a conservative Court. The conservative Court expressed itself in Griggs unanimously with a conservative Chief Justice, Chief Justice Burger. The conservative Court expressed itself in a school case of Swann versus School District, again a unanimous Court opinion written by Justice Burger, again an opinion which has been taken issue with by those on the far right who really seek to revise what the Court has done, not to move to a conservative position, but a revisionist Court, which I think is a major concern because what we really have in that context is the Court making new law.

New laws are the province of the Congress of the United States. We may come to a point, Mr. President, where the Senate will have to assert its role as a full partner in the process of selecting Supreme Court Justices.

(Mr. RIEGLE assumed the chair.)

Mr. SPECTER. It is fascinating to note that when the Constitution was adopted the early draft of the Constitution in the Constitutional Convention gave to the Senate the sole authority to pick Supreme Court Justices. If we are going to be looking at Supreme court Justice nonimees whom you vote for very much like you vote for Senators, and when Senators run for election we state our position on all the issues, it may be that the nominees will have to or should have to—we may move to a point where they will be pressed very hard if they are to be confirmed to answer these public policy questions, if they insist on making public policy.

In the context of Judge Thomas' own background, this was a matter of major concern for this Senator. I questioned Judge Thomas extensively on this point because he had written extensively observing that in his view Congress was not a deliberative body, Congress did not exercise wisdom, Congress was collectively irresponsible, and Congress looked out for the interests of the individuals as opposed to the general good.

I respect Judge Thomas' views on that subject. But when it comes to what Congress has stated as a matter of congressional intent in the determination of public policy, that binds the Court when it is a nonconstitutional issue.

In one of Judge Thomas' writings before he went onto the bench he had commented about the case of Johnson versus Santa Clara Transportation Co. that he hoped that Justice Scalia's dissent would provide the basis for a future majority position.

In another speech, although not endorsing the broad context, he had stated that a quick fix would be to appoint more Supreme Court Justices. That obviously raises the question in my mind which I asked Judge Thomas about as to whether he would go to the Court with an ideology to obtain the social policy that he desired in light of the Supreme Court decision in Johnson versus Santa Clara County.

He did not like the Supreme Court decision in Local 28 versus EEOC, United Steelworkers versus Weber and Fullilone versus Klutznick. He acknowledged expressly that Congress had the authority to change those Supreme Court decisions interpreting the Civil Rights Act, but recognized that the fact that Congress had not overturned those cases was strong evidence that those cases expressed Congress's intent. These cases were clearly a matter of statutory construction, not of constitutional dimension. I asked Judge Thomas head on if he would have an agenda on the bench to overrule congressional intent, and he was very emphatic in his writings, these philosophical musings, that he would not follow congressional intent.

That is always a difficult matter, Mr. President, as we take a look at what he had written before. It is my judgment that it is insufficient to deny Judge Thomas confirmation in the face of the other qualities which he brings to the bench.

Professor Drew Days, of Yale Law School, who appeared and testified against Judge Thomas, was asked by me whether he thought Judge Thomas was intellsctually and educationally capable of handling the very onerous responsibilities of a Supreme Court Justice. Although Professor Days objected to Judge Thomas on philosophical grounds, Professor Days conceded that Judge Thomas had the intellectual and sducational capability to be on the Court.

There was impressive testimony given by Dean Calabresi also of the

Yale Law School, who was on the faculty when Judge Thomas was at Yale, and commented about Judge Thomas' qualifications. Indeed, Dean Calabresi said that he thought Judge Thomas merited a "well qualified" designation from the American Bar Association, which only gave Judge Thomas a "qualified," but Dean Calabresi said that Judge Thomas merited a "well qualified" as much as any of the other recent nominees who received that classification by the American Bar Association.

There was impressive testimony given by former chief Judge John Gibbons of the third circuit, a man whom I have known for many years, who is on the third circuit for 20 years. He knew Judge Thomas very well, having served on the board of Holy Cross with Judge Thomas for many, many years. Judge Gibbons had read all of Judge Thomas's opinions, and expressed the view that Judge Thomas was intellectually well qualified for the Supreme Court of the United States.

My own reading of Judge Thomas' opinions led me to believe that he is a solid judicial craftsman. When it comes to the question of Judge Thomas' philosophy and Judge Thomas' approach, reasonable men can differ on a number of the positions which he articulated. I thought his nomination process important to provide a national debate on the subject of affirmative action. Regrettably the proceedings did not really move in much depth in that direction.

Most really move in much depth in that direction.

Most of our time was consumed on the question of natural law. Judge Thomas was criticized for retreating on the position of natural law.

But if you take a look at all of Judge Thomas' writings, and all of his speeches, natural law contained a very small fraction of his attention. Most of what he had to say about natural law looked at it as a basis for the equality of man, for ridding the African-Americans of slavery, and as a more appropriate basis for the desegregation case, Brown versus Board of Education.

Mr. President, a very key factor in my own analysis of Judge Thomas is the importance of diversity on the Supreme Court of the United States. I believe that those who seek to pigeonhole Judge Thomas at this time as an extreme conservative or in any particular direction are likely to be surprised. While he did testify in response to my question that he favored the death penalty, he also exhibited real balance I think and real sensitivity on the issue of criminal rights and minority interests.

At one point in the proceeding there was very poignant testimony on his part where he said that as he looks out the window from his own office in the court of appeals he sees the police vans bringing up African-American defendants, and he looks down and comments that "There, but for the grace of God, would go Judge Thomas."

In a case involving a young Hispanic man named Jose Lopez on the court of appeals, Judge Thomas joined in an opinion, which he did not write but joined, which allowed criminal courts to look into the background of the criminal defendant when sentencing even though the Uniform Sentencing Guidelines prohibited considering socioeconomic circumstances. So that when a test came on applying a broader, perhaps even liberal, if you will, interpretation of the guidelines, Judge Thomas was willing to go the extra mile in giving this young Hispanic an opportunity to mitigate or have a lesser sentence, even though the statute prohibited consideration of socioeconomic circumstances.

Mr. President, I also think that Judge Thomas has the potential to serve as a very important role model for African-Americans and other minorities in this country. I have not gone into his background in Pin Point, GA, under the extraordinary circumstances of the discrimination, segregation, in which he lived, but Judge Thomas has a background which will bring a very, very unique perspective and a very, very different point of view to the Supreme Court of the United States.

One other point, Mr. President, is the potential for Judge Thomas to gain a following in articulating a different point of view from many of those who speak out in the African-American community today—one opposed to affirmative action which he says is harmful to the person who is the beneficiary because it paints a picture of inadequacy.

It is harmful to the individual who is replaced by someone with a lower test score, and it promotes racial divisiveness. My own questioning of Judge Thomas has led, to me, a somewhat different view of affirmative action. But I believe that his view is well within the realm of reasonableness. He articulates a position which I think is entitled to a hearing in America today, to let a more expansive view of affirmative action come to grips with what Clarence Thomas has to say on affirmative action, to let that idea percolate in the marketplace of free ideas.

As a final point, I have not stated a position on Judge Thomas based on any political consideration, but I think that there is an underlying current—and we talked about it a little bit in the hearings—of the Democratic hierarchy being opposed to Judge Thomas, and the traditional African-American leadership being opposed to him because he points out a different perspective.

I know that in Pennsylvania, in Philadelphia, we have a one-party system and have had for more than 40 years. And the possibility of having a role model or a conservative Republican who shows great success in climbing the ladder of success is something that is worthwhile in our society—not a reason to nominate a man, not a reason to confirm a man, but a byproduct worth noting.

In essence, Mr. President, I support Judge Thomas, because he has a very high level of intellect. Anybody who doubted that should have sat through the hearings. He dealt with 8, 10 tough lines of questioning by the Judiciary Committee members who went into very substantial detail, and his responses were at a high intellectual level.

His educational background from Yale is excellent. Yale did very well at the hearings this week. We had a lot of talk about the Yale Law School. Taking a look at his work on the Court of Appeals, he has done a very solid job there as well. I believe he will bring a measure of diversity with his African-American roots, which the Supreme Court across the green sorely needs to give a different picture to America.

Judge Calabresi testified about the projection of growth and the projection of development and, in my view, Judge Thomas has that potential, and I believe he is worthy of confirmation, and I intend to vote in favor of his confirmation.

I yield the floor.

Mr. BROWN. Mr. President, I ask unanimous consent to address the Senate as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATOR BROWN'S SERVICE ON THE JUDICIARY COMMITTEE WITH SENATOR SPECTER

Mr. BROWN. Mr. President, I rise to give tribute to the distinguished Senator from Pennsylvania. I had the pleasure of serving with him these past 2 weeks in the Judiciary Committee, during which time Judge Thomas' nomination was considered. Of the members of that committee, I must say, I was most impressed with Senator SPECTER—his thoughtfulness, ingenuity, perseverance and tenacity, and most of all, an unbiased quest for the truth; I was impressed by this Member greatly.

The simple fact was, if it was a tough question to be considered, Senator SPECTER often offered it. He probed witnesses, and I am convinced the proceedings benefited greatly by his great intellect, and by his quest to bring out the facts.

As one who is serving their first term on the Senate Judiciary Committee, I found sitting next to the distinguished Senator from Pennsylvania a great experience, and I think his probing mind brought a great deal of benefit not only

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migrant who is now an American citizen.

He lost his job, and he was threatened with the loss of his home. He told me "My American dream is turning into a nightmare."

They should hear from Shirley Lundgren of Lowell.

Mrs. Lundgren's husband has lost his job for the second time in less than 2 years.

The Lundgrens lost their health insurance. They fear they cannot provide their children with necessary medical care. They sold their family heirlooms, cashed in their pension, and spent all their savings in order to feed and clothe their two daughters and maintain their home.

In a voice close to tears, but still proud and strong, Shirley Lundgren said to me "Senator, we need help. Tell them in Washington that the recession isn't over."

We said in August that if the administration refused to provide these benefits in August, Congress would be back in September with a new bill.

And we have kept our word to the American people.

We intend to do our best to see that these benefits become available as soon as possible, before yet, another month of no benefits goes by.

There is one serious omission that is of concern to me and to many of my colleagues, and that is that the extended benefits provided under the bill in its present form would not be available to unemployed railroad workers.

It was not the intention of the sponsors to exclude railroad workers. However, because those workere are covered under a separate railroad unemployment insurance program, I am advised that an amendment to the Railroad Unemployment Insurance Act may be necessary to enable those workers to receive extended benefits.

I hope to see that omission corrected in the bill that we send to the President's desk.

The administration says that providing unemployment compensation on an emergency basis would violate the Budget Act. But if helping the unemployed is not an emergency, then what is?

When Congress authorized the budget agreement last year, we specifically included provisions to permit emergency spending in an economic downturn.

It is exactly this type of situation that we had in mind.

The budget agreement was intended to provide flexibility in dealing with economic problems, not as a device for the administration to deny help to working families enduring hard times because the economy has gone bad.

Let us be clear about what is busting the budget.

It is the Reagan-Bush borrow and squander policies that provided huge tax cuts for the wealthiest 1 percent of Americans, while raising taxes on the middle class.

As a recent report by Citizens for Tax Justice points out, the total cost of the tax breaks given to the wealthiest 1 percent over the last decade is $164 billion.

That is $164 billion in increased government borrowing to pay for these tax breaks.

Compare that $164 billion to the approximately $5.5 billion that these extended unemployment benefits will cost. If these tax breaks had not been given to the wealthiest 1 percent of the population, we could pay for these benefits 30 times over.

In the face of this record, what alternatives do our Republican colleagues offer? One bill would only provide 10 weeks maximum benefits, while the majority of States would only get 6 weeks. This is clearly inadequate.

The other Republican proposal extends more tax breaks to the wealthy through a capital gains tax cut, justified with the same old discredited supplyside arguments that oreated the gaping deficits we now face.

This type of tax giveaway to the wealthy is one of the main reasons that jobs and income have stalled for most Americans. Now, when we try to ease the pain by providing emergency unemployment benefits for hard-working Americans, the administration turns thumbs down.

Unemployment benefits alone will not reverse the economic decline of the United States, but they are a good place to draw the line. Congress must say "no more" to the continued administration policy of rewarding the wealthy, while taxing the middle class and refusing to provide help to working families most in need.

The bill that we have introduced is an important first step in sending that message, and I urge the Senate to pass it.

The ACTING PRESIDENT pro tempore. The time of the Senator from Massaohusetts has been charged against the time of the Senator from Texas [Mr. BENTSEN].

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, as Senator KENNEDY requested, I also ask unanimous consent to speak as if in morning business for a period of 5 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Iowa is recognized for 5 minutes.

Mr. GRASSLEY. I thank the Chair.

(The remarks of Mr. GRASSLEY pertaining to the introduction of S. 1742 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. GRASSLEY. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The absence of a quorum having been suggested, the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mrs. KASSEBAUM. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF JUDGE CLARENCE THOMAS

Mrs. KASSEBAUM. Mr. President, over the past 2 weeks, the Judiciary Committee has been engaged in hearings on the nomination of Judge Clarence Thomas as an Associate Justice of the Supreme Court. Like most of my colleagues. I have not been directly involved in these hearings, but I have followed them closely.

I was particularly interested, Mr. President, in Judge Thomas' 5 days of testimony before the committee. While I had met with the judge before the hearings began and found him to be an impressive person, I believe the hearings and Judge Thomas' response to the questions raised during the hearings have been important to all of us in considering this nomination.

Having met with Judge Thomas and having listened to his testimony, I believe he is genuinely a fair-minded person with the integrity and independence necessary to serve on the Supreme Court. I believe his word that he would bring no preestablished agenda to the Court but will judge each case on its merits according to the law.

Another factor in my own thinking is Judge Thomas' life story. While much has been made of this, perhaps too much, I do not discount the fact that Judge Thomas has experienced poverty and racism firsthand. Being poor and black does not automatioally qualify Judge Thomas or anyone else to be a Supreme Court Justice. But, I do believe that those experiences must have played a role in shaping both a conscience and a consciousness that will force Judge Thomas to wrestle seriously and honestly with the issues that come before the Court.

Mr. President, I will vote to confirm Judge Thomas as an Associate Justice of the Supreme Court. I believe he is a man of intelligence, integrity, and oharacter. I also believe, and I think the hearings have demonstrated, that he has what is called judicial temperament, and that, I believe, Mr. President, is a very important qualification.

Mr. President, I yield the floor and suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BENTSEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WELLSTONE). Without objection, it is so ordered.

telling the American people. It is very complex, as the issues involved are very complex. Ultimately, the issue of reform must involve an understanding of what the American people want from their health care delivery system, how much of it they think ought to be brought under the control of the Federal Government, and how much the American people are willing to pay in additional taxes. I submit that these issues are being glossed over by many who are introducing health reform proposals.

I think it is time we took a deep breath as a country and stepped back to take a look at what the most critical issues to be decided are, what the tradeoffs for various alternatives are, what our priorities are, and begin to develop a jointly held agenda for reform.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GORTON. Mr. President, I ask unanimous consent that I be permitted to proceed for roughly 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

WHAT EMERGED WAS A MAN OF COMPASSION

Mr. GORTON. Mr. President, when one reads about Clarence Thomas, one cannot help but be struck by the enormous ohallenges he has faced and the magnitude of his achievements. Judge Thomas has lived a remarkable odyssey. Born black and poor in a time and place of repressive racial segregation, overt discrimination and limited opportunities, Judge Thomas has surmounted barriers one after another to stand today on the threshold of a seat on the U.S. Supreme Court.

I am deeply impressed by his guiding personal philosophy of self-help, a philosophy he has lived, a philosophy that has brought Judge Thomas to this pinnacle. His nomination is the culmination of an extraordinary career of hard work, dedication, wise mentors, and luck which seemed to improve the harder he worked.

In fact, it is precisely these accomplishments and this philosophy that have alarmed some of his harshest critics. Some groups and individuals opposed Judge Thomas' nomination before even reviewing his record or granting a fair hearing. He was condemned for being different, for failing to hew to the road blazed by the mainstream of the civil rights establishment.

Their protestations were both premature and misdirected. The Thomas writings and speeches they damned were those of a thoughtful advocate refining his guiding philosophy, one that matured and evolved over the years. At the same time, however, Judge Thomas would have been subject to even greater criticism by those same critics had he lacked strong convictions in his capacities as policymaker.

No Supreme Court confirmation should be based upon a nominee's views on any particular issue. If approved, Justice Thomas may sit on the Court for three or more decades. It would be shortsighted to gauge his fitness based on a guess as to how he might vote on any single current issue—even if such a guess later may prove to have been well-founded.

It is, of course, just that kind of single-interest litmus test that has diminished the value of Supreme Court confirmation hearings. Knowing that a precise answer to a single question may cost a nominee any chance of confirmation, it is hardly surprising that all such questions are ducked. In fact, a nominee willing to engage in such an exchange probably should be rejected on the ground that he or she lacks the good judgment necessary to be on the Supreme Court.

When a majority of the Senate Judiciary Committee rejected Robert Bork, it condemned itself to a set of bland, inconclusive hearings, like those on David Souter or Clarence Thomas. Judge Bork engaged committee members in a clash of ideas. For his pains, he was sentenced to personal humiliation, the mischaracterization of his views, and rejection. The Supreme Court got a fine, though less distinguished, yet equally oonservative justice. A valuable lesson was taught, and as a result, it is likely that no futurs nominee will follow Judge Bork's lead.

Even so, during 5 grueling days of personal testimony and cross-examination, Judge Thomas conducted himself with grace and composure. He patiently listened to ringing testimonials, stinging critioisms, and a barrage of wide-ranging questions, answering some admittedly, and politely but forcefully declining to answer others.

To the degree that we could make judgments of him, what emerged was a thoughtful jurist who remembers, learns and gains from each challenge, a person whose background of poverty, segregation and paternal abandonment will yield valuable perspeotive on many critical issues to oome before the bench. Arthur Fletcher, the Chairman of the U.S. Commission of Civil Rights and a supporter of Clarence Thomas' nomination, said, "In his heart of hearts—Judge Thomas—knows how he got where he is."

What emerged was an open-minded jurist who will temper cold legal reasoning with absolute fairness, compassion, warmth and humility, one who can emphasize, rather than merely sympathize, with many of those who will come before the Court. At critical junctures in his life, special people stepped forth to act as mentors because they saw these qualities in the young Clarence Thomas. Because of these qualities, Judge Thomas has engendered the loyalty and faith of those who know him best. For example, Margaret Bush Wilson, the former chairperson of the NAACP who regards Clarence Thomas as a second son, and Doug Mooney, a practicing attorney in Seattle who has been a close friend since they worked together in the Missouri Attorney General's office, emphasize the humanity of Clarence Thomas as among his most endearing traits.

What emerged was a legal scholar who will be true to the words and purpose of the Constitution. Judge Thomas is a fiercely independent thinker whose views may not be pigeonholed, or coerced, views which will add to the diversity of debate among the nine Justices.

Mr. President, Judge Thomas is an excellent candidate. He has the credentials and the temperament to sit on the highest court of this land. I urge my colleagues to vote to confirm Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask unanimous consent to speak as though in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. LEAHY. Mr. President, let me follow the distinguished Senator from Washington State who has spoken. Let me express my views on the same subject.

The Senate's responsibility to advise and consent on Supreme Court nominations is one of our most solemn duties, and each Senator has to approach it in his or her own way. Some argue that we should, except in the very rarest of cases, simply confirm the President's nominee.

I can give a President's nominee the benefit of the doubt, but I approach each nomination to the Supreme Court as it comes, on its own terms.

The White House is extremely confident that Judge Thomas will soon be Justice Thomas. Some will argue then, that a single Senator's vote really does not make any difference. On a lifetime appointment of this importance, the vote of every Senator counts. My vote on this nomination is but 1 of 100. It may not affect the final outcome, but my oath to uphold the Constitution,

including its advice and consent provision, requires that I cast it conscientiously.

I do not consent to the nomination of Judge Clarence Thomas as an Associate Justice of the Supreme Court of the United States.

Judge Thomas has overcome what for many have been insurmountable obstacles with admirable courage and determination. However, this triumph alone cannot propel him to a seat on the U.S. Supreme Court.

A Supreme Court Justice must possess, above all, a deep and profound vision of the Constitution and the role that document plays in the oomplex intertwining of American society. A nominee must possess that vision and must bring it to bear on cases argued on the same day he or she ascends to the highest court in the land.

Last year, at the hearing held to consider his nomination to the D.C. Circuit, Judge Thomas said that he was "not * * * someone who has had the opportunity or the time to formulate an individual, well thought-out constitutional philosophy." After 5 days of testimony during the Judioiary Committee's fair and thorough hearings, Judge Thomas' judicial philosophy remains unformed or at best obscure.

To perform my constitutionally required responsibility of consent, I must be sure in my own mind that the nominee's vision does not threaten or undermine the Constitution and the Bill of Rights. Although during Judge Thomas' brief tenure on the Court of Appeals he has been thoughtful and moderate, his decisions have not dealt with the pivotal constitutional issues that are the routine fare of the Supreme Court.

I tried during the hearings to assess Judge Thomas' constitutional vision, but Judge Thomas refused to answer questions and repeatedly disavowed the passionate statements of his earlier speeches and writings. As a result, no one knows what Judge Thomas' constitutional vision is.

After reviewing Judge Thomas' past record and listening to his testimony I am left with far too many doubts to consent to his nomination. I have doubts about his legal ability, which, at this early stage in his career, is largely untested, and I have doubts about how Judge Thomas views the fundamental right to privacy, including a woman's right to choose. Nothing in these hearings was more astonishing than his statement to me that he has never discussed Roe versus Wade, the most controversial Supreme Court case of the last quarter-century.

In the face of these doubts, the fact that Clarence Thomas is a fine person with a good sense of humor who pulled himself up by his bootstraps and succeeded in a hostile world is not enough—not for elevation to the Supreme Court; not for a lifetime appointment which could last into the third decade of the next century; not to be a final arbiter of the Constitution and the Bill of Rights.

QUALIFICATIONS

My first concern is that nothing in Judge Thomas' record or testimony suggests the level of professional distinction or constitutional grounding that a Supreme Court nominee ought to have. His legal, as distinguished from administrative, experience is limited, as is his judicial experience—a year and a half on the Court of Appeals with scant consideration of constitutional issues. His speeches and writings have shown little in the way of analysis or scholarship.

Nor did his performance in the hearing suggest that Judge Thomas has any framework for approaching constitutional issues. When, for example, Senator SPECTER asked how he would analyze whether the Constitution required a congressional declaration of war in circumstances like the Korean conflict, Judge Thomas appeared unable even to discuss the relevant constitutional considerations.

DISAVOWALS AND REFUSALS TO ANSWER

My second concern is Judge Thomas' disturbing flight from his record. Instead of taking responsibility for the statements he made as Chairman of the EEOC, Judge Thomas asked the committee to weigh only his statements during the hearings in determining who the real Judge Thomas is.

In distancing himself from past statements, Judge Thomas took various tacks: either, first, he meant to say something far more temperate than his pugnacious rhetoric suggested; second, he had not really read what he was oommenting on; third, he was just trying to score a point with his audience and did not mean what the words seemed to say, or fourth when he became a judge, he "stripped down like a runner" and shed the harsh views expressed as an executive branch advocate. Let me give you a couple of examples.

Although he spoke repeatedly on the pivotal nature of natural law and said that "the higher law background of the American Constitution * * * provides the only firm basis for a just, wise and constitutional decision" (speech before the Federalist Society, University of Virginia School of Law, March 5, 1988). Judge Thomas maintained at the hearings that natural law should play no role in constitutional adjudication.

Another example: although he warmly praised Lewis Lehrman's essay arguing that all abortion is unconstitutional (Lehman, "The Declaration of Independence and the Right to Life," the American Spectator, April 13, 1987), calling it a "splendid example of applying natural law," (speech before the Heritage Foundation, June 18, 1987) Judge Thomas maintained at the hearings that this was just a throwaway line, that he only skimmed the article before praising it, and that he mentioned it only to make his conservative audience more receptive to civil rights. (September 10, 1991 Tr. at 196, 97; September 11, 1991, Tr. at 96-97). In fact, he said he had not even read the article before the hearings.

Another example: Although he told the American Bar Association that "economic rights are protected as much as any other rights,"—ABA address, August 11, 1987—a statement that contradicts the Supreme Court's post-Lochner jurisprudence, Judge Thomas maintained at the hearings that he only meant that economic rights should not be forgotten.

Another example: Although he appeared to moderate his views on affirmative action at the hearings, his writings attack virtually every Supreme Court case since Bakke that upholds racial or gender preferences, even as a last resort.

Moreover, during the hearings, Judge Thomas repeatedly described the combative right-wing rhetoric that punctuates his speeches and articles in watered-down, mild tones. For example, although he endorsed the statement that the United States was "careening with frightening speed toward * * * a statist-dictatorial system * * *"—speech before the Cato Institute, April 23, 1987—and said that "demagogues" are using the underclass to advance a political agenda that resembles "the crude totalitarianism of contemporary socialist states * * *"—speech at California State University, April 25, 1988—Judge Thomas said during the hearing that he only meant to underscore the importance of the individual agalnst the State.

The statements from which Judge Thomas distanced himself during the hearings were not the ingenuous or unschooled statements of his youth. Judge Thomas made them during the last several years as Chairman of an important Government agency. I think senior executive officials speaking in public should be held to mean what they say.

Even assuming that we accept Judge Thomas' current disclaimers, that would mean only that he gave too little thought to the words he was using or else was willing to say things he did not believe to curry favor with conservative audiences. If the latter is true, it raises question about how much Judge Thomas was willing to bend his views to curry favor with the Senate.

My third concern is Judge Thomas' selective refusal to answer questions. I said in my opening statement that I expected answers to fair questions. However, Judge Thomas played it safe and declined to answer many questions he should and could very easily have answered.

Perhaps Judge Thomas' advisers told him the nomination was his to lose and

oounseled him not to answer the questions the American people truly care about. This may have been good politics, but it did not fulfill Judge Thomas' responsibility to the Nation. As I said when the hearing began, no nominee should be asked to discuss cases pending before the Court. Neither should a nominee feel free to avoid questions about established constitutional doctrine on the ground that a case on that subject eventually will oome before the Court.

No one could compel Judge Thomas to answer questions. The decisions not to tell us how he thinks—not to give us a window into his mind—was his and his alone. In choosing not to share his vision of the Constitution, Judge Thomas failed to provide what I need as a Senator for informed consent.

Just as no one could compel Judge Thomas to answer the Judiciary Committee's questions, no one can compel me to vote for a nominee who has not satisfied his obligation to answer legitimate questions.

Nor will I vote for any nominee now pending or planned who refuses to answer appropriate questions about his or her approach to the Constitution, which I recognize may be different from that nominee's personal philosophy.

Judge Thomas' stated rationale for refusing to respond to questions was that such responses would compromise his impartiality. But Judge Thomas was erratic in his application of this standard. He oommented on the propriety of capital punishment, the use of victims' impact statements and the application of stare decisis—all issues likely to come back before the Court. Indeed, he commented on the long-accepted Lemon versus Kurtzman test for deciding establishment clause cases, although that test is sure to be challenged in Lee versus Weisman, a case pending before the Supreme Court right now.

Yet on privacy issues, Judge Thomas refused to do more than recite what the Court has held. The degree to which he would speak to legal issues appeared to correlate more to whether Judge Thomas would win or lose votes on the committee than to how his public statements would affect his impartiality or even the appearance of impartiality.

Judge Thomas' refusal to answer questions was especially hard to fathom because it was he who opened the door to them. He endorsed the Lehrman article; he participated in the White House Working Group that criticized Roe, he cited Roe in an article on the privileges or immunities clause, and he specifically referred to abortion in a column in the Chicago Defender. It is difficult to comprehend how Judge Thomas could have made those referenoes with no opinion on the underlying privacy issues.

Indeed, all of the troubling questions about this nomination—ambiguous testimony, repudiations, and nonresponses—coalesce in the area of privacy.

Clarence Thomas came to the Judiciary Committee with an inconclusive, but troubling history on privacy rights. As I said at the outset of this process, Judge Thomas' embrace of Lewis Lehrman's article, "The Declaration of Independence and the Right to Life," was of particular concern to me. The consequence of Lehrman's thesis that a fetus has an inalienable right to life beginning at conception is that any termination of a pregnancy at all, even in the third day, would constitute murder. That radical position goes far beyond the views of even most conservatives that abortion is a political issue best left to the legislative branch.

Despite repeated questions from me and other members of the committee, Judge Thomas did not categorically state that he disagreed with the Lehrman article. Instead, he explained that he invoked the article in his speech to a conservative audience to find "unifying principles in the area of civil rights" (September 11, 1991, Tr. at 96) and that he does "not endorse" (September 13, 1991, Tr. at 21) Lehrman's conclusion.

Those responses leave me—and I would expect the Senate—with more questions than answers. At the time Judge Thomas embraced the Lehrman article, did he understand its implications? Was he not sufficiently concerned about its conclusion to think twice about calling it a splendid example regardless of who the audience might be?

Judge Thomas explained another aspect of his record by saying that—although his name appeared on the report of the White House Working Group on the Family, a report which criticized privacy cases, including Roe,—he had not read the report then or now.

In his testimony before the committee, he recognized the fundamental right to marital privacy. But does that fundamental right to privacy—apart from an equal protection analysis—extend to single people? He was asked that question repeatedly during the hearings and did not give a clear answer.

Finally, as I told Judge Thomas during the hearing, I had some real difficulty with his statement that he had never discussed Roe versus Wade with anyone. That answer had troubled me as much as any answer he gave, and I thought about it a great deal. I still find it hard to believe that there is a lawyer in this country who thinks about the Constitution at all who has not discussed Roe versus Wade. He said he did not. That is his answer. That is the record. But I find it so hard to understand.

The fundamental right to privacy is much more than the constitutional right of women to make very personal decisions about reproduction. It is the right of all of us to be free from government intrusion into the most basic, private aspects of our lives. The people of Vermont have a right to know where a nominee to the Supreme Court stands on the right of privacy, and I cannot consent to a nominee who refuses to explain his own record on that issue.

CONCLUSION

I will not allow the advice and consent process to be reduced to a kabuki theater of ritualized refusals to respond. I will not acquiesce in artful evasions and disclaimers. Unless the nominee is willing to engage in genuine dialog, the Senate cannot fulfill its constitutional responsibility. I will not vote for a nominee on the hope that he or she has a capacity to grow and will change for the better

Clarence Thomas is an impressive man who has overcome great odds and accomplished much in his life. It may be that at some time in the future he will be ready for a seat on the Supreme Court. But nothing in his record or his testimony gives me confidence that he is ready to fulfill that solemn responsibility today.

Nor do I give any credence to those who say that we should accept one nominee because, if we do not, the next one is going to be worse. We should take each nominee, one by one, as they come.

I would welcome the opportunity to confirm a person who had overcome the obstacles surmounted by Judge Thomas, who was also a proven jurist with a demonstrated compassion for individual rights, but I cannot consent to this nominee who possesses such a contradictory record and brief judicial experience. I cannot justify taking the risk that voting in favor of Judge Thomas' confirmation would represent.

Too much is at stake in this nomination. The next justice we confirm will help shape the law of our land for decades to come. It is incumbent upon this body to insist upon a nominee who has the professional distinction and constitutional vision to assume the responsibilities of a Supreme Court Justice; who is willing to engage this body in an honest debate; and who will stand rock solid in defense of our fundamental liberties and rights. I do not believe that Clarence Thomas is that nominee and therefore I shall cast my vote against confirmation.

EMERGENCY UNEMPLOYMENT COMPENSATION ACT OF 1991

The Senate continued with the consideration of the bill.

The PRESIDING OFFICER (Mr. ROBB). The Chair recognizes the Senate Republican leader, Senator DOLE.

SENATE—*Wednesday, September 25, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 9:45 a.m., on the expiration of the recess, and was called to order by the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

* * * *ye shall know the truth, and the truth shall make you free.*—John 8:32.

Eternal God, true and righteous in all Your ways, forgive us when we subordinate truth to expediency or convenience, and help us all to realize that error is destructive, truth is redemptive.

We pray today for the press and media. Thank You for their hard work, the risks they often take, and the availability of their product every minute of every day. Thank You for a free press. We accept the policy of adversarial journalism—but deliver them from preoccupation with digging for dirt. We thank You for their zeal to inform, and we pray that You will save them from sacrificing truth for bylines and facts for opinion.

Gracious Father, forgive us for our too easy, unfair criticism of the fourth estate. Help them to be aware of their responsibility and opportunity to influence leadership and people in constructive ways for a better world. Grant them grace to comprehend their enormous power for good or evil—to heal alienation or to create it. Grant that truth will be their motivation, not personal vendettas. Encourage and guide them in their indispensable role for a strong and free America.

In His name who is Truth incarnate. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a oommunication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 25, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable J. ROBERT KERREY, a Senator from the State of Nebraska, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KERREY thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order there will now be a period for the transaction of morning business not to extend beyond the hour of 10 a.m. with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Missouri is recognized.

SUPPORT FOR CLARENCE THOMAS

Mr. DANFORTH. Mr. President, I am pleased to note that yesterday at least four Members of the Senate announced their intention to vote in favor of the nomination of Clarence Thomas for the U.S. Supreme Court. On the Republican side, Senator GORTON and Senator KASSEBAUM both came to the floor of the Senate and announced their intended vote for Judge Thomas. On the Democratic side, in their home States, Senator SAM NUNN, of Georgia, and Senator HARRY REID, of Nevada, both stated their intention to vote for Judge Thomas.

It is good news, indeed, that support in the Senate is building for such an admirable and well qualified nominee for the U.S. Supreme Court. I look forward to later in the week when the Judiciary Committee is expected to vote on the nomination and then, hopefully in a week or so, the issue will come onto the floor of the Senate and we will have the opportunity at that time to vote on the Thomas confirmation.

CIVIL RIGHTS LEGISLATION

Mr. DANFORTH. Mr. President, on a different subject, yesterday seven Republican Members of the Senate introduced S. 1745, which is the most recent and final version of the proposed civil rights legislation.

We are ready for floor action on that bill. We have spent a year-and-a-half making every effort to come to an accommodation with the President on the civil rights issue. Obviously, it would be better to have White House approval for the bill than White House opposition to the bill. I regret to say that despite heroulean efforts to reach an accommodation with the White House, that effort has failed.

We introduced on June 4 a package of bills that were designed to be balanced and to split the difference between where the White House was last year and where Congress was last year. Then we entered into lengthy negotiations and made 22 different ohanges in the legislation to accommodate the administration. All of that failed. So we really have no alternative now but to go to the floor of the Senate, hopefully in the near future, to pass a bill. Unfortunately, it will almost certainly come to the question of whether or not we have the votes to override a Presidential veto.

I want to state to the Senate that the major issue before us is a very profound issue and a philosophical issue. We have been hearing lawyers talk for so long that it is easy to mistake the civil rights question as being merely a matter of wording or something that can be solved by fine tuning the phraseology of legislation. I wish that were the case, Mr. President. Believe me, if that were the case, we would have solved this problem a year ago.

But the difference is not simply verbiage and the difference is not simply legalistic. It is a narrow difference but a very deep difference. And it has to do with whether an employer can use selection criteria, that is hiring or promotion criteria, which have the practical effect of screening women or minorities from jobs but which have no relationship to the ability of an employee to do the job.

This is an issue that has already been resolved. It was resolved by the U.S. Supreme Court in 1971 in the case called Griggs versus the Duke Power Company. That case, unfortunately, was overruled by the Supreme Court in 1989 which put us in our present quandry.

Last year, the Congress overwhelmingly passed the Americans With Disabilities Act, and the President in a Rose Garden ceremony with much fanfare signed the ADA into law. The Americans with Disabilities Act provides, among other things, that selection criteria which have the effect of screening out the disabled must be related to the ability of an employee to perform the job. That is precisely the same issue that will be before the Senate as early as next week. Should the same standard which applies to the disabled apply to blacks and women and

Hispanics and other minorities? Or should a tougher standard, as far as the disadvantaged groups are concerned, apply to women and minorities than apply to the disabled?

We decided in the Americans with Disabilities Aot, for example, that height and weight requirements which screen out the disabled cannot be used if those people are able to perform the job. How can we argue that the same standards should not apply to blacks or to women? Why should it be right to screen out women from job opportunities when under the ADA, an employer cannot screen out disabled people? That is the issue before us.

Mr. President, I want to state finally that this is not a quota issue. Unfortunately, the White House in its statement yesterday used the word "quota" three times in four lines of print to describe the bill. I had hoped to avoid a contentious battle on the floor of the Senate because I think race politics is not only bad for my political party, I believe it is bad for the country. We have been unable to do that. I am sorry that yet again this word "quota" is being bandied about wrongly as a way to try to characterize this legislation.

Mr. PRESSLER addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

JUDGE CLARENCE THOMAS

Mr. PRESSLER. Mr. President, I rise today to state that I shall vote to confirm the nomination of Judge Clarence Thomas to serve on the U.S. Supreme Court. I have known Clarence Thomas since the time he worked for Senator DANFORTH. In fact, my wife and he have been friends since those days, and I feel that I know him. I respect him and admire him.

The conformation of Supreme Court nominees has become a political football. The way the Senate does its work on these confirmation hearings greatly troubles me. Public witch hunts are conducted to find some little flaw in the nominee's background that can be blown out of proportion. No such flaw was found in Judge Thomas' background.

It has been my philosophy that a President, generally speaking, deserves to have his judicial nominees confirmed. I stood in this Chamber when Jimmy Carter was President and announced I would vote to confirm Abner Mikva for the Court of Appeals. We had a great battle over his confirmation. He is now a Court of Appeals judge. During his confirmation, the battle was over his stand on certain issues. At that time, the Democrats were in control of the White House and of the Senate. The Republicans wanted to ask him certain questions about gun control. Judge Mikva said he would have to weigh the issues of each case and make his decision. I voted for him because I felt the President of the United States deserved his man, barring some ethical problem.

It is my general philosophy that the people of the United States elect the President with the understanding that he is going to appoint judges sharing his philosophy. Our system works to provide our people with a balance in government. Presently, they have elected a Democratic Congress and a Republican President. Over time, they swing back and forth.

Arthur Schlesinger has written about this swing back and forth between the two parties that occurs periodically in American political history. Somehow we are blessed, we are lucky enough to have a system that provides for changes in popular sentiment. I have just returned from a trip to some of the Republics of the Soviet Union and other countries where they do not have a political system where the people are lucky enough, wise enough, or blessed enough by the Almighty to have this swing back and forth to accommodate change in popular sentiment.

In any event, soon we will vote on the nomination of Judge Clarence Thomas. I shall vote for him. I do not know if he is going to be as conservative a judge as everybody says. In fact, he may serve 30 years and turn out to be a liberal judge before he is done.

Hugo Black, who was a former member of the Ku Klux Klan, had a fairly conservative voting record in this Chamber. I remember sitting in a class at Harvard law school and one of the professors, having seen Justice Black on television the night before with the Constitution in his hands, said what a great Justice Hugo Black would be. He said he liked a liberal interpretation—what we call liberal nowadays; it used to be conservative—of the Constitution. He noted what a great transition Judge Black had made from his days as a member of the Ku Klux Klan to the present.

There are no analogies here. My point is once a judge gets on the bench, he is there for life and he might rule any number of ways. I think we should be careful not to characterize judges so closely on a philosophical basis. I hope that Members of the Senate would not vote against him on a philosophical or partisan basis. I believe Supreme Court nominations are too important for that.

Mr. President, I shall vote with pride to confirm the nomination of Judge Clarence Thomas to serve as an Associate Justice on the Supreme Court of the United States. I yield the floor.

Mr. DIXON. Mr. President, I understand that morning business conoludes at 10 a.m. May I have unanimous consent to proceed in morning business for a brief period of time that will not be in excess of 10 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

NOMINATION OF CLARENCE THOMAS

Mr. DIXON. Mr. President, may I first say that I congratulate my friend, the senior Senator from South Dakota, on his remarks.

While I have not yet announced and will not announce what I intend to do in respect to the Clarence Thomas confirmation vote in the Senate, I think my colleague is correct in observing that what a Justice may do on the Supreme Court is not really known to us. I would think that Judge Thomas' testimony indicates he is not the dedicated conservative some may suspect.

I really do share the view of my friend from South Dakota that should Mr. Thomas be confirmed for a position on the U.S. Supreme Court, he might surprise a good many people in the administration with respect to a good many of the decisions he will render. I predicate some of that upon the information I have received evaluating this judge by Chief Justice Abner Mikva, who is an old friend of mine that I served with in the Illinois legislature and the Congress, who has indicated to me in private conversations that he believes this judge has a broader view than some in the administration might suspect.

I thank my friend from South Dakota.

(The remarks of Mr. DIXON pertaining to the submission of Senate Resolution 184 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

Mr. DIXON. Mr. President, I yield back my time.

AM RADIO STEREO STANDARDS

Mr. PRESSLER. Mr. President, reoently I introduced S. 1101, the AM Radio Improvement Act. This legislation would direct the Federal Communications Commission [FCC] to initiate a rulemaking for the adoption of AM stereo radio transmission equipment standards. Many radio broadcasters, equipment producers, the top radio industry commentators, and I believe that such action by the FCC is long overdue.

While the technology for stations to broadcast in AM stereo exists, not many broadcasters do so. With the current recession, many broadcasters cannot afford to invest in the necessary AM stereo technology in the absence of a national standard.

The FCC deoided in 1981 not to choose a standard AM stereo system. Their assumption was that the marketplace would quickly make that decision. The market, however, has failed to decide between oompeting systems. This has

SENATE—*Thursday, September 26, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 9:15 a.m., on the expiration of the recess, and was called to order by the Honorable HERB KOHL, a Senator from the State of Wisconsin.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

*But after thy hardness and impenitent heart treasurest up unto thyself wrath against the day of wrath and revelation of the righteous judgment of God * * *.*—Romans 2:5.

Eternal God, Judge of all the Earth, help us comprehend where we are in history. Help leadership—in Government, business, industry, the professions, education, labor, and the church to interpret the frightening symptoms—financial corruption, dysfunctional families, teenage pregnancies, chemical abuse, crime, violence, murder in our streets, personal freedom become moral anarchy, soaring debts, national, private and corporate, crises in the Middle East and Europe. Conditions are not improving despite all our efforts; they are worsening.

Gracious Father, divert our headlong plunge to destruction. "The gay nineties were followed by recession and World War I. The roaring twenties were followed by the Great Depression and World War II." Moses warned, "Beware, lest you forget the Lord your God * * * when you have eaten and are full, when you have built goodly houses and live in them, when your herds and your flocks increase, when your silver and your gold increase, when all that you own increase. Beware, lest you forget the Lord your God * * *" (Deuteronomy 8) Awaken us to the peril in prosperity. Like the little boy who, when the grandfather clock chimed "13," rushed to his parents crying, "Mommy! Daddy! It's later than it's ever been before." It is later than it's ever been before. Forgive our hedonism, materialism, narcisism. God of mercy, save us from playing fiddles while the Nation burns.

In the name of the Savior. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, September 26, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable HERB KOHL, a Senator from the State of Wisconsin, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. KOHL thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for not to extend beyond the hour of 10 a.m., with Senators permitted to speak therein. The Senator from Washington [Mr. ADAMS] is permitted to speak for not to exceed 10 minutes; the Senator from Texas [Mr. GRAMM] is permitted to speak for not to exceed 5 minutes; the Senator from Colorado [Mr. BROWN] is permitted to speak for not to exceed 5 minutes; the Senator from Alabama [Mr. HEFLIN] is permitted to speak for not to exceed 15 minutes.

In my capacity as a Senator from the State of Wisconsin, I suggest the absence of a quorum. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KOHL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ADAMS). Without objection, it is so ordered.

NOMINATION OF CLARENCE THOMAS

Mr. KOHL. Mr. President, when a vacancy develops on the Supreme Court, there is always a flurry of talk about what standards the Senate ought to use as it discharges its advice and consent responsibilities. That theoretical discussion, however, soon submerges when the name of the nominee is announced by the President. Then we forget theory and turn to speculation about what the nominee's record tells us about his or her views and what the prospects are for confirmation.

In my opinion, Mr. President, we would be better served if we engaged in that process from the perspective of some clearly articulated standards of judgment.

The Constitution allows each Senator to apply any standard they wish. My standard is simple: judicial excellence. In my judgment, any nominee to the Supreme Court of the United States—the Court which interprets our Constitution and protects our liberty—must be exceptional.

When a President nominates someone to serve in the executive branch, we owe some deference to his desires. Absent compelling evidence to the contrary, the President is entitled to have the people of his choice serving in his administration and implementing his policies. But the Supreme Court represents a coequal and independent branch of Government. It is not an extension of the executive or the legislative branch. It serves neither; it applies the Constitution to both. Therefore, a President's nominee has no presumption operating in his or her favor; instead, the nominee accepts a burden of proof—a burden to demonstrate to the Senate that he or she ought to sit on the Supreme Court, that he or she deserves a lifetime appointment.

Over the past 43 years, Clarence Thomas has demonstrated many admirable qualities. He has demonstrated that he is a man of great character and courage. He has demonstrated that he has the strength to triumph over adversity. He has demonstrated that he has retained his sense of humor and that he deserves the respect and admiration of his many friends.

In my judgment, however, Judge Thomas has not demonstrated that he ought to sit on the Supreme Court. Let me tell you why.

First, Judge Thomas lacks a clear judicial philosophy. Less than 2 years ago, when Judge Thomas was nominated to serve on the appeals court, he told us that he did not have a fully developed constitutional philosophy. That did not disqualify him for a low court, which is required to follow precedent. But the Supreme Court creates precedent—it interprets the Constitution in which we as a people place our faith, and on which our freedoms as a nation rest. So it was my hope that during the hearings, Judge Thomas would articulate a clear vision of the Constitution—ideally, one that included full safeguards for individuals and minorities, and which also squared with his past positions. Unfortunately,

after spending 5 days listening to Judge Thomas testify, I was unable to determine what views and values he would bring to the bench.

Second, Judge Thomas demonstrates seleotive recall. Judge Thomas asked us to heavily consider his experiences as a young man while at the same time he asked us to discount views he expressed as an adult. He told us that his musings about natural law, his endorsement of treating economic rights on par with individual rights, and his dismissal of almost all forms of affirmative aotion as a remedy for discrimination were not relevant. These policy positions, he asserted, would have no impact on his decisions on the Court. In fact, he suggested a judge should shed his views just as a runner sheds excess clothing before a race.

This approach troubles me. In my opinion, it is totally unrealistio to expect that a Justice will not bring his values to the Court. Presidents nominate candidates based on their values and the Senate must consider them as well. As Chief Justioe Rehnquist wrote:

Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa [blank slate] in the area of Constitutional adjudioation would be evidence of lack of qualifioation, not lack of bias.

I agree with the Chief Justice: Either we judge Clarence Thomas on the complete record or we do not look at the record at all.

Third, Judge Thomas engages in oratorical opportunism. Judge Thomas crafted policy statements apparently tailored to win the support of specifio audiences—and then later repudiated these very same positions. For example, when speaking to the Federalist Society, he said that the natural law background of the American Constitution provides the only firm basis for a just, wise, and oonstitutional decision. Yet during the hearings he steadfastly maintained that natural law played no role in constitutional adjudication. He told another audience that Lew Lehrman's article opposing abortion was a splendid application of natural law. Yet at the hearings he said he had only skimmed the article and never endorsed Mr. Lehrman's oonclusions. I find this disturbing.

Fourth, Judge Thomas' lack of legal curiosity is troubling. Judge Thomas told the committee that Roe versus Wade was one of the two most significant decisions handed down by the Supreme Court in the last 20 years. Yet he also told the committee that he had never discussed that decision, either as a lawyer or as an individual, and had no views about it. If we accept that claim, it raises unanswered questions about the depth of his interest in legal issues.

Fifth, Judge Thomas demonstrated limited legal knowledge. When asked questions of law, many of his replies were disappointing—whether involving antitrust, the War Powers Act, freedom of speech, the right to privacy of habeas corpus. In contrast, at his confirmation hearings, Justice Souter displayed a wealth of constitutional understanding in all of these areas. Judge Thomas lacks this depth of judicial knowledge. But that is not surprising for, after all, he has been an appellate court judge for less than 2 years and prior to that he was a policymaker. While his level of expertise is acceptable for an appellate court, it is not sufficient to meet the demands that are made of a Supreme Court Justice.

Frankly, I expected Judge Thomas to resolve my concerns during the hearings. But, for whatever reasons, he was extremely guarded in his appearance before the committee. His answers were less than forthcoming and often not responsive to the questions he was asked. Judge Thomas did not—and should not—tell us how he would rule on Roe or any other case. But he could and should have told us how he would approach those cases. Judge Thomas had a full opportunity to tell the committee, the Senate, and the country why his professional qualifications—as opposed to his personal accomplishments—justified his elevation to the Supreme Court. He failed to do that. He failed to discharge his burden of proof. He failed to demonstrate the level of judicial excellence which ought to be required on the Supreme Court, and as a result, he has failed to win my consent to his confirmation.

However, I expect that he will win the approval of a majority of my colleagues. Their support for his nomination will, I suspect, be based on the hope that Judge Thomas will continue to grow as a jurist and develop as a person. I may not share their vote, but I do share their hope. Clarence Thomas is a man with the ability to inspire in even those who will not vote for him the hope that he will, if confirmed, beoome what we all want him to become: an outstanding Justice.

The PRESIDING OFFICER. The Chair recognizes the Senator from Alabama to speak in morning business, for a period of time not to exceed 15 minutes. The Senator from Alabama, Senator HEFLIN.

Mr. HEFLIN. First, Mr. President, I have been asked by the leadership to ask unanimous consent that Senator CRANSTON be recognized for up to 5 minutes to speak during morning business today.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE CONFIRMATION OF JUDGE CLARENCE THOMAS

Mr. HEFLIN. I rise to express my views on the "advise and consent" responsibility of the U.S. Senate concerning Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States.

I think it is clear that Judge Thomas will be confirmed by the full Senate. In my discussions with Senators, I do not think there are many doubts that he has the votes to be confirmed when the full Senate acts on his nomination.

However, I have an individual responsibility to make up my mind and vote the dictates of my conscience guided by a profound respect for our Constitution and Bill of Rights which have governed our Nation for over 200 years.

First let me say, I support a conservative court; my votes for Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy and Souter support my basic philosophy in this regard. However, I am not for an extremist right wing oourt that would turn back progress made against racial discrimination as well as the progress that has been made for human rights and freedoms in recent years.

I entered the hearing with an open mind, as I have in all of the judioial confirmation hearings in whioh I have participated; not as an advocate, but as a judge. I try to be fair to the nominee, to the President, to the nominee's opposition, and to the American people.

Judge Thomas' history revealed that he has an admirable record of coming from a disadvantaged background to sucoess through a history of perseverance and hard work. He has suffered the ravages of segregation and racial discrimination. With the guidance of a strong grandfather and the discipline instilled in him by the nuns who taught him at an all-black parochial school in Savannah, Clarence Thomas was determined to succeed. He ultimately graduated from Yale Law School of whose preferential admissions policies he was a beneficiary.

Judge Thomas has over the last deoade written and spoken extensively on a wide variety of legal issues. My review of his writings and speeches raised questions in my mind that he might be part of the right wing extremist movement.

During the course of the hearing, Judge Thomas' answers and explanations about previous speeches, articles and positions raised thoughts of inconsistencies, ambiguities, oontradictions, lack of scholarship, lack of conviction and instability. During the hearing I expressed that such created an appearance of confirmation conversion—a term used by Senator LEAHY in the Bork hearing—and that he was an enigma because of his puzzling answers and explanations.

One of the most troubling areas of the law was his frequent reference to an adoption of the theory of natural law, which is a "higher law" of "right and wrong" existing essentially outside the Constitution.

In speech after speech, Judge Thomas has referred to the theory of natural law as follows:

The higher law background of the American government, whether or not explicitly appealed to or not, provides the only firm basis for a just and wise constitutional decision.

Then in testimony before the committee he disavowed those statements made repeatedly over the past decade as having been made "in the context of political theory" by a person who he self-describes as a "part-time political theorist," and he articulated the position that natural law should never be used as a basis for constitutional adjudication.

In a speech to the Pacific Research Institute in 1987, Judge Thomas stated:

I find attractive the arguments of scholars such as Stephen Macedo who defend an activist Supreme Court that would strike down laws restricting property rights.

Modern constitutional jurisprudence has reversed holdings of the Lochner era which relied on natural law, and the law is well settled that economic rights are not held to the same high standards as personal or individual rights. Now, for many decades the Supreme Court has recognized that Congress has broad powers to regulate commerce in order to proteot public safety, health, welfare and the like; otherwise, there would be no minimum wage laws, no occupational safety and health laws, no environmental protection laws, nor laws providing for Federal inspection of aircraft or food and meat products.

Judge Thomas' explanation of his position on natural law gave me concern on whether he had changed his position for expediency's sake. My position on natural law should not be misunderstood: I believe there is a danger that the loose application of natural law can be employed as support for any desirable conclusion, thus making it possible to invalidate established holdings or laws on the authority of a "higher law." However, I believe that concepts of natural law do have a role in construing the language of the Constitution, but not in superseding it.

Judge Thomas' explanation of his criticisms of the opinion in Brown versus the Board of Education raised concerns in my mind.

I have reservations about his commitment to judicial restraint as evidenced in his words of support of Justice Scalia's dissent in the case of Johnson versus the Transportation Agency of Santa Clara County—an employer discrimination case upholding a lower court interpretation that title VII of the Civil Rights Act of 1964 allowed an employer to adopt a voluntary affirmative action plan to bring equally qualified women into the work force that had been exclusively male in the past. In a 1987 speech to the Cato Institute, Judge Thomas said he hoped Justice Scalia's dissenting opinion would help provide guidance for lower courts and a possible majority in future decisions.

Judge Thomas' words of support of Justice Scalia's lone dissent in the case of Morrison versus Olson upholding the appointment of a special prosecutor to investigate alleged wrongdoing in the executive branch of Government also troubles me. Justice Scalia's dissent used natural law to argue against the constitutionality of the statute authorizing the appointment of a special prosecutor. In a 1988 speech, Judge Thomas cited the dissent as "How we might relate natural rights to democratic self-government and thus protect a regime of individual rights."

Judge Thomas' answer that he failed to read the report of the White House working group on the family when he had signed off on such report as a member of the group raises basic questions of his lack of thoroughness and circumspection.

Judge Thomas' answer that he had never discussed the case of Roe versus Wade with anyone is simply hard to comprehend. How could any lawyer not have, at some point in his or her career, at least discussed this well-known and controversial Supreme Court decision?

In his 1987 speech to the Pacific Research Institute, Judge Thomas states that he finds attractive arguments of the libertarian philosopher Stephen Macedo that an activist Supreme Court should strike down laws restricting property rights. The content of this speech, in general, evidences to me a tendency of Judge Thomas to harbor a libertarian philosophy.

Judge Thomas' responses to the questions about Oliver Wendell Holmes, a great Justice, continue to linger in my thoughts. In a speech to the Pacific Research Institute in 1988, Judge Thomas said this about Holmes:

The homage to natural right inscribed on the Justice Department building should be treated with more reverence than the many busts and paintings of Justice Oliver Wendell Holmes in the Department of Justice. You will recall Holmes as one who scoffed at natural law, that "brooding omnipresence in the sky." If anything unites the jurisprudence of the left and right today, it is the nihilism of Holmes. As Walter Berns put it in his essay on Holmes, most recently reprinted in William F. Buckley and Charles Kesler's "Keeping the Tablets": "* * * 'no man who ever sat on the Supreme Court was less inclined and so poorly equipped to be a statesman or to teach * * * what a people needs in order to govern itself well.' Or, as constitutional scholar Robert Faulkner put it: 'What (John) Marshall had raised, Holmes sought to destroy.' And what Holmes sought to destroy was the notion that justice, natural rights, and natural law were objective—that they exist at all apart from willfulness, whether of individuals or officials.

However, at the hearing Judge Thomas stated this about Holmes: "he was a great Judge. * * * obviously now he is a giant in our judicial system."

During the hearing, Judge Thomas stated that later, after reading a biography of Holmes and other writings about Holmes, he developed a praise worthy view of the judicial career of Holmes. However, his remarks about Holmes in his speech indicate a lack of scholarship and objectivity when he used dogmatic words in harshly attacking Holmes before a receptive audience.

It is interesting to note that his criticisms of Justice Holmes were because Holmes took the same position that he, Clarence Thomas, now takes; that is, that natural law should not be used as a basis of constitutional adjudication. Adding to his previous inconsistencies on the doctrine of natural law, Judge Thomas' responses suggest to me deceptiveness, at worst, or muddle headedness, at best.

I came away from the hearings with a feeling that no one knows what the real Clarence Thomas is like or what role he would play on the Supreme Court, if confirmed. I want to give him the benefit of the doubt because of the well-deserved success he has achieved in overcoming the bonds of racial discrimination and poverty to become one of our Nation's top Federal officials in both the executive and judicial branches of government and because his presence would continue a wellneeded diversity on the Court.

The Senate Judicial Committee hearings have revealed to me many inconsistencies and contradictions between his previous speeches and published writings and the testimony he gave before the committee. His testimony before the committee in several instances contained outright disavowals of previous statements and positions, further obscuring his constitutional philosophy.

I stated at the onset of the hearing that Judge Thomas' own testimony could remove, clarify, decrease or increase any doubts which we in the Senate might have about his nomination. Most of these doubts still remain along with newly created doubts.

Should I therefore follow the old adage "when in doubt—don't" or on the other hand, because of his accomplishments under adverse circumstances, give him the benefit of the doubt?

Our Nation deserves the best on the highest court in the land and an error in judgment could have long lasting consequences to the American people. The doubts are many. The court is too important. I must follow my conscience and the admonition "when in doubt—don't."

I will respectfully vote against the confirmation of Clarence Thomas to become an Associate Justice on the Supreme Court of the United States.

Mr. ADAMS addressed the Chair.

The ACTING PRESIDENT pro tempore. The chair recognizes the Senator from Washington.

THE NOMINATION OF CLARENCE THOMAS

Mr. ADAMS. Mr. President, on July 1, President Bush announced he was nominating Federal Appeals Court Judge Clarence Thomas to succeed retiring Justice Thurgood Marshall on the U.S. Supreme Court. The President described Judge Thomas as "the best man for the job."

The day following that announcement, I happened to be meeting in my Seattle office with a group of women's rights activists and supporters of an initiative that will appear on the ballot in the State of Washington in November. The subject of our meeting was to be initiative 120—an effort to set into State law the abortion rights enunciated in Roe versus Wade, a decision handed down by the Supreme Court in 1973.

Our meeting quickly became a discussion of the Thomas nomination and what it represented for America, what it represented for the direction of the Court and the rights of women in society. And as I spoke with this group, which included African-American housewives, activists, and many others representing a diverse cross section of our community, including Kathleen O'Connor, Lucinda Harder, Esther Alley. Ms. O'Conner said to me: "I am more disturbed than I have been in a long time. I am afraid this man is being thrown up because he is black and conservative, so he can further divide this country."

Lucinda Harder then said, "I am disheartened by what has happened, and I feel helpless."

I promised the group I would carefully follow the Thomas confirmation process, and that I would make a visible and vocal stand at an appropriate time.

Mr. President, that time has come. I followed the hearing process. I have reviewed the testimony on natural law. I have listened, read, and watched. All of us have come to know the inspiring story of Clarence Thomas' journey from rural poverty in Pin Point, GA, to graduation from Yale Law School, and later appointment to chair the Equal Employment Opportunity Commission, and to be appointed to the U.S. Court of Appeals. But now the President asks the Senate to confer upon Judge Thomas a lifetime appointment to the highest Court in the land. I stress this is not an appointment to an executive branch post, where the argument can be made that the President should be given some deference in forming his cabinet. This process involves the creation of the third branch of our government under the Constitution, a coequal branch and, therefore, must be treated much differently than a nomination to the executive branch.

At the relatively young age of 43, Judge Thomas would be called upon to interpret our Constitution and the laws of our land well into the 21st century. He could affect, in particular, the individual rights of Americans, and the proper relationship of the awesome power of government to attack those fragile individual rights that are the essence of a democratic society. This confirmation process should be directed to discovering where Judge Thomas stands, rather than on retracing the road he has traveled.

Unlike the most recent nominee, Judge Souter, this nominee has a well-documented, conspicuous public record during the past decade as a Federal official in several positions. He has given numerous speeches, expressed a variety of opinions on a number of topics, and made decisions that have affected the rights of thousands of Americans. That public record is more relevant to the proper exercise of our advise and consent responsibility than are the many other laudable aspects of the life of Clarence Thomas.

As chairman of the Subcommittee on Aging, I am particularly interested in his actions regarding our senior citizens. While serving as Chairman of the EEOC, Clarence Thomas disregarded the Federal authority to bring age discrimination cases, the statute of limitations ran out, and as a result, thousands of cases were dismissed. Behind that sad record of neglect, and the statistical number of case dismissals, were thousands of individual citizens who were denied their day in court. One of them, for example, was a citizen from my State named Ray Albano. Ray was a student at the University of Washington, several years behind me, and I remember him as a first-class tennis player. But after suffering from degenerative arthritis, and a hip socket replacement, Ray found himself in a hostile, discriminatory work environment. So he went to the EEOC in February 1985, and filed an action.

Because the Seattle office was just following the directives coming from EEOC headquarters, Ray Albano's case was neglected and then dismissed. Thanks to legislative relief, and a reinstatement by the Federal appellate court in San Francisco, Ray Albano at last says he has a day in court coming after 7 years of seeking relief from the agency Clarence Thomas was then heading. On September 19, Ray Albano, a strong Republican, flew to Washington to personally express to me his opposition to the Thomas nomination.

Mr. President, I ask unanimous consent that the text of his testimony be printed in the RECORD following my comments.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. ADAMS. Mr. President, I urge my colleagues to read his statement. It is a compelling recitation of what can happen to a single individnal when those charged with upholding the law fail, or refuse to carry out the law.

Last week I was visited by the Pacific Northwest regional director of the NAACP, together with the director of the organization's Washington Bureau. Throughout my nearly 30 years of public service, I have maintained great respect for the work of the NAACP in helping forge the nonpartisan coalition that has moved our society forward, particularly in the area of civil rights. Those individuals reminded me of a time when the NAACP asked that I oppose the nominations of Robert Bork, and David Souter. They said it would have been inconceivable that their organization would hold an African-American nominee to a lesser standard. The NAACP, after long and difficult reflection, has chosen to oppose Judge Thomas's nomination to the Supreme Court. I was asked to hold this nominee to the same standard I applied to Judges Bork and Souter, both of whom I opposed. I shall do so.

In reviewing the testimony Judge Thomas presented before the Judiciary Committee, I noted once again the irony of hearing another male nominee to the court willing to discuss his views on the constitutionality of the death penalty, and other constitutional questions, while refusing to admit to even having any views on the constitutionality of the privacy rights of women to decide, free of Government interference, whether to have an abortion. Judge Thomas claims to have never discussed Roe versus Wade, or to have formed an opinion on the ruling, despite the fact that this landmark decision was rendered while he was a student at Yale Law School.

Mr. President, another Supreme Court appointment that pushes the Court farther to the right, out of the mainstream of contemporary society's view on the rights of women, and the indifference shown to senior citizens, is a dangerous step in the wrong direction.

Because I fear that Judge Clarence Thomas, by his record of public actions, writings and comments, coupled with his refusal to admit to ever having even given the matter of the privacy rights of women any serious thonght, and to have stated and done what he did as chairman of the EEOC, in the exercise of my individual responsibility under article 2, section 2, of the Constitution of the United States, I will vote no on the nomination of Judge Clarence Thomas to the U.S. Supreme Court.

I yield the floor.

In closing, Mr. President I wish to pay tribute to the staff members who accompanied me to the floor today.

For nearly 3 months, a member of my staff worked full time reviewing the Thomas record and researching the numerous speeches articles, and opinions Judge Thomas has authored. I want to

express my deep appreciation and gratitude to Ms. Tracey Eloyce Rice, a third-year student at the Georgetown Law Center from Seattle, WA, for her outstanding staff work on this nomination.

EXHIBIT 1

STATEMENT OF RAY ALBANO ON THE CONFIRMATION OF JUDGE CLARENCE THOMAS TO THE SUPREME COURT, SENATE JUDICIARY COMMITTEE, SEPTEMBER 19, 1991

My name is Ray Albano. I'm 60 years old, and I live in Seattle, Washington. I would describe myself as politically conservative. I have never voted for a Democrat for President, and the only Democrat I ever did vote for was Scoop Jackson. I have served as leader of the 21st District Republicans in Snohomish County, and as a Lynwood City Council member.

Seven years ago, I became the victim of age discrimination. What happened to me at the EEOC under the direction of Clarence Thomas is why I oppose his nomination to the U.S. Supreme Court. The EEOC did all it could do to *not* to help me. The agency did everything possible *not* to enforce the very law that it was charged with enforcing. In fact, the EEOC let the statute of limitations run on my claim, and it is only because of a special act of Congress and my own persistent efforts that I have gotten anywhere. And I know that my experience was not unique.

From 1973 to 1985, I worked as a sales representative for a major corporation. In 1983, I found out that the company had a plan to force out its older workers. Their plan became very real to me when I was denied a promotion. I was the most qualified candidate for the job, and the person selected was not even 25 years old. I asked to be considered for another position, but was told that this was not a possibility either. I was told that both jobs were "young men's jobs."

I have degenerative arthritis, and in 1984 I had my hip replaced. For about two weeks, I was in the hospital, and I was on medical leave from October 1984 until January 1985. During this time, my employer expected me to carry a full workload. In fact, the day after I was released to return to work, my supervisor put me on probation, citing poor performance. He also moved several of my key accounts and reduced my commissions. He told me that I would now have to call on retail stores, and I would have to help build displays for these stores. This meant carrying and lifting heavy cases—work that was very painful and difficult for me because of my surgery. I was told that I had to do it—I had no choice—if I wanted to keep my job. It seemed that my employer was trying to get me to quit. I was so scared and upset that I would go home at night and cry. I couldn't afford to lose my job, and I tried to do the best I could, but every day, my supervisor would find something else wrong with my performance. Finally, I decided that I had no choice but to file an age discrimination charge.

I went to the EEOC in February 1985. I told them about the promotions I had been denied and why I believed it was because of my age. I told them about the company's plan to get rid of its older workers. I told them about my surgery and the pressures placed on me during my medical leave. I told them about being placed on probation and my commissions being reduced the day after I came back to work. I told them that I had been given a job assignment that I found almost physically impossible to do, and that I had a doctor's letter confirming this. I told them that I believed that my employer was harassing me to make me quit my job.

Despite all this, all the EEOC would do is to put a claim of a denied promotion in the charge. They told me that I would be assigned an investigator and I could tell the investigator about all the harassment. I tried to discuss it further, but got nowhere. I was told to sign the complaint as it was drafted, so I did.

In late February 1985, I tried to discuss the harassment with the EEOC investigator. In fact, conditions at work had gotten worse. I was told, however, that I could not amend my claim.

Finally, all the abuse at work took its toll. I couldn't handle it any more—either physically or emotionally—and so I left my job on March 1, 1985. A few weeks later, I called the EEOC to tell them what had happened. I again asked if the charge should be amended to reflect the harassment. I was told that was not necessary.

Altogether, I had about 14 conversations with the EEOC. I had to initiate every call; they never contacted me. In many of these conversations, I tried to discuss the harassment and whether I needed to amend my complaint. Each time I was told no. I never received anything in writing from the EEOC telling me what was happening with my case. Finally, in February 1987, the EEOC told me that they were not going to do anything about my charge, and that it was too late to file suit.

I didn't do anything after that, because I thought there was nothing I could do. Then, I heard on the news that Congress had extended the statute of limitations for Age Discrimination claims. So, I found a lawyer, who filed suit for me in federal court. I lost. One of the reasons was that the statute of limitations had run.

I appealed my case to the Ninth Circuit Court of Appeals, where I finally won. On August 30, 1990, the court ruled that my suit could go forward. Finally, I have a trial date set for next April. The Ninth Circuit ruled that I had done all that could reasonably be expected to protect my rights, and that the EEOC had been at fault.

I flew here from Seattle because I think I have an important story to tell. I know that what happened to me at the EEOC was not isolated or unique. In fact, one of the EEOC case workers told me that they simply were following policy from Headquarters. They had received memos from Washington, D.C. telling them to get rid of their cases as fast as they could. And I was one of the many victims. As head of the EEOC, Clarence Thomas tried to gut the very law he was charged with enforcing. His record makes me question his respect for established law that may be at odds with his personal beliefs. I am here to oppose his confirmation to the U.S. Supreme Court.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from California for 5 minutes, and Senator BROWN for 5 minutes, and then Senator BUMPERS.

NOMINATION OF CLARENCE THOMAS

Mr. CRANSTON. Mr. President, I spoke out against the nomination of Judge Clarence Thomas to the Supreme Court while I was in California last Sunday. As the first Senator to oppose the nomination I want briefly to state my reasons now to the Senate.

I was one of only nine Senators who voted against the appointment of Justice David Souter to the Court last September. This time I expect I will be joined by a far larger number of Senators in opposing the confirmation of Judge Clarence Thomas. I am delighted that the distinguished Senator from Washington has just now taken that position.

Most of all, I am encouraged by the courageous statement of opposition made a few moments ago by the distinguished Senator from Alabama, HOWELL HEFLIN.

Mr. President, this nominee is not—I repeat, not—assured of confirmation.

I doubt that anyone in the country believes President Bush's statement that Judge Thomas is "The best man for the job." Certainly no attorney in our country believes that.

I have a number of reasons for voting against Judge Thomas, not the least of which is his refusal to reveal his views on the fundamental issue of a woman's right to choice. Judge Clarence Thomas has embraced the Souter syndrome of silence in response to important questions, the answers to which the Senate has a right to know. Ironically, he did so after asking the Senate to ignore his past written statements and to judge him solely on his testimony. I am deeply disturbed by Judge Thomas' easy disavowal before the Judiciary Committee of positions he strongly held and publicly proclaimed upon previous occasions.

I am disturbed also by this: Judge Thomas benefited from an affirmative action program at Yale Law School but now opposes affirmative action for others. And this concerns me: I wondered about the idea that Thomas' personal experience of poverty, pain, and discrimination and certainly in his life he has suffered from all of those and more, but wondered about the notion that that suffering, that experience, would make him compassionate about injustices to others, when I heard of his ridiculing his own sister for being on welfare.

Mr. President, recognizing the long-term impact that Justices would have on the life on the Nation, our Founding Fathers wisely placed the power to select Justices not in the hands of a single man, the President, but equally in the hands of the Members of the U.S. Senate. The Constitution is explicit about this coequal responsibility.

For a nominee to win my vote, he or she must manifest a basic commitment to and respect for the individual rights and liberties inherent in the fabric of the Bill of Rights. The burden of proof is on the nominee to convince the Senate that he or she has such a commitment. Judge Souter shunted that burden aside. So did Judge Thomas.

Both nominees took the position that the Members of the U.S. Senate are not entitled to know their views, or under-

stand what type of legal reasoning they would apply, in the critical area of a woman's right to choice in matters relating to abortion.

Judge Souter told us he had thought about the issue but he declined to share those thoughts with us. Judge Thomas, for his part, says he has never even discussed his views or Roe versus Wade with another person. That statement defies belief.

I find it impossible to advise and consent to a nomination when the nominee is not forthcoming during the very process which the Constitution says we in the Senate must carry out.

In the case of Justice Souter I did not, and in the case of Mr. Thomas I will not, vote to confirm a Supreme Court nominee who refuses to reveal his views on the legal doctrines involving one of the most important constitutional issues of our time.

I yield the floor, Mr. President.

UNEMPLOYMENT

Mr. PELL. Mr. President, yesterday while the rain fell in sheets in the city of Warwick, RI, nearly 8,000 Rhode Island residents stood in line, some of them for hours, waiting their turn to receive a bagful of Federal surplus foods.

According to news reports, these people—including the jobless, those on welfare, retirees—all of them needy, began lining up 2½ hours before food distribution was to begin.

Mr. President, the demand for this surplus Federal food stunned local officials. It is, however, one more indication that despite all the optimistic words to the contrary, our economic situation is bad and getting worse.

This saddening evidence of human need deepens my conviction that the administration and the Congress must recognize now the economic reality of a continued and worsening national economic recession and take action. We should act now to relieve the misery of the victims of this recession; we should act now to stimulate the economy, and to restore economic health and jobs.

And one of the first things we should do is to enact at once an extension of unemployment compensation for the long-time jobless. I have lost patience with those who contend that our Government should do nothing; with those who say the recession is short, shallow, and over. I have totally lost patience with those who say we cannot afford to extend unemployment compensation benefits to those who have been hit hardest and longest by this recession.

Mr. President, those who were lined up in the rain in Warwick, RI, were not lining up to just show concern. They were lined up because they need help, they need it now, and they need it badly.

As a retired truck driver told a news reporter: "It's either stand in line or go hungry. I'd rather get wet and eat."

I would note that the unemployment rate in Rhode Island has climbed steadily for months and now stands at 9.1 percent. Because of its high jobless rate, Rhode Island is now the only State in which the long-term jobless are eligible for extended unemployment compensation payments. And unless Congress acts, and the President acts, another 5,500 Rhode Islanders next week will lose their extended benefits. Then they too can go and stand in line for food to feed their families.

Mr. President, I urge the Congress to act swiftly to send an extended unemployment pay bill to the President, and if he vetoes that bill to override the veto at once.

I ask unanimous consent that an Associated Press report on the food distribution in Warwick, RI, be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

HARD TIMES FOUND ON FOOD LINE

WARWICK, RI.—The depth of Rhode Island's recession can be found among the more than 7,800 people who lined up in the rain for a distribution of surplus food.

"I am stunned," Joseph Trainor, associate director of Warwick Community Action said as he stuffed canned goods in bags on Wednesday. "The economy is in the toilet. That's all I can say."

Social-service workers point to Rhode Island's 9.1 percent unemployment rate for August and the continued banking crisis that has left $1 billion tied up in frozen accounts.

Similar distributions of the free federal food have been held or are planned around Rhode Island. One earlier this week in Newport drew several Navy wives who said their husbands' paychecks were insufficient to live in this expensive area.

Social-service agencies say they expect to give out 1 million pounds of food this week, twice what was handed out during a similar distribution in March.

To get the food, people must show a state Human Services Department voucher. The vouchers most commonly go to those on welfare or those receiving disability or heating assistance.

A retired truck driver who would not give his name summed it up as he waited on line outside the Warwick Knights of Columbus Hall.

"It's either stand in line or go hungry," he said. "I'd rather get wet and eat."

People started lining up at 7:30 a.m. even though the hall's doors didn't open until 10 a.m. By the end of the day, the community action agency had distributed 58,000 pounds of food.

Typically a family of four gets two jars of peanut butter, two boxes of raisins, two cans of pork, four cans of green beans, two 5-pound bags of flour or cornmeal, a 5-pound block of American cheese and four 1-pound blocks of butter.

"I had no choice but to stand there," said Tina Perry, who receives welfare to support her family of four. "I need this."

She said she had little food, macaroni but no sauce, bread but no cheese.

"You have to understand how bad the economy is for them to suffer through this," said a woman, the single mother of three children, as she stood in line. "I think it's indicative of the situation of the economy, and it's causing people to come out no matter what the weather is."

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

ORDER OF PROCEDURE

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate was supposed to resume consideration of H.R. 2521 at this time.

Mr. INOUYE. Mr. President, the committee is prepared to proceed on the debate on the MX missile, but I have been advised that two of my colleagues wish to be heard on other matters.

So, if I may, I ask unanimous consent that 10 minutes be set aside, to be shared equally by Senator BROWN and Senator BUMPERS to speak as though in the morning hour and we will proceed thereafter and vote at 10:30.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Chair recognizes Senator BROWN for 5 minutes and Senator BUMPERS for 5 minutes.

Mr. BROWN. I thank the Chair, and I extend my thanks also to the distinguished Senator from Hawaii whose kindness has allowed us to proceed.

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. BROWN. Mr. President, I rise to address the decision before the Senate in this coming week with regard to Judge Thomas and his ratification or lack thereof for the Supreme Court of the United States.

Mr. President, this is the first such deliberation I have participated in as a Member of the Senate, and as the newest member of the Judiciary Committee, it has been a fascinating experience. It is one that I think is, if nothing else, thorough in its focus. And I must say I believe the Senate has chosen wisely in conducting this kind of indepth investigation.

It is quite true that the phenomenon of delving into, over a period of several weeks, the background of a Supreme Court nominee is relatively new in our country's history. The fact is, most nominees in the history of this Nation have not been called on to respond to questions in depth, have not had their backgrounds gone over with a fine tooth comb. But I believe it is a wise policy to do so.

I think the hearings, while frustrating at times for the participants on both sides of the aisle, have been fruitful and beneficial to this Nation. This nomination will end up influencing the

judiciary of the United States for decades to come. If Judge Thomas serves as long as his predecessor in that office, he will serve four decades. Whether it is that 40 years or a lesser term, in the event he is confirmed, he will have a profound impact on the Nation's future and its judicial system.

So I think the time that the Senate has spent, while extensive, has been worthwhile and helpful. Judge Thomas over the years' service in both public and private has written and spoken widely on wide range of topics, many of them hot politics. And so the scope of the inquiry involved not only his background but a wide range of publio writings and speeches. It promised, at least at first, to be a hot hearing, one that would deal with lively subjects, that would involve a give and take and a strong exchange.

For those who hoped for that, at least in the 5 days that the judge was testifying, they had to come away a bit disappointed. I think it is fair to summarize the result of the sessions as ones of interest but not ones that broke new ground in terms of judicial discussion.

The fact is, on the subject of natural law, the judge spoke out unequivocally in stating that he would not use natural law to interpret the Constitution. He did so under oath. And when questions were raised about that because of his previous writings, a search of the reoord revealed that he had made precisely the same statement when he was confirmed for the Circuit Court of Appeals. Judge Thomas at least in this regard has been 100 percent consistent with his past record. What he says now is exactly the same thing that he said when he came up for the Circuit Court of Appeals.

One, of course, should not stop with simply those statements but look at the record. But a review of his record on the circuit court of appeals indicates a very thorough commitment to that thought. He has not used natural law in interpreting the cases before him on the Circuit Court of Appeals. The simple fact was many of the hot topics we thought they would get at in the Judiciary Committee turned out to not be so.

Judge Thomas simply said, in many hot areas, that he had no quarrel with the way the court rules now. In the area of Roe versus Wade, he was asked his feelings with regard to that case in every conceivable way I know that an attorney could approach it. At last count, the questions had exceeded 70.

The characterization of his response I think has been accurately reported here on the floor. The fact is Judge Thomas did not give us a olue as to how he will rule on a review of Roe versus Wade.

Now he did indicate he believed in the right to privacy, which, in many of the cases, has been the fundamental in reviewing that decision. So at least as far as the basis of that decision, he has committed to this Senate to honor the right to privacy.

But I think any fair observer has to come away from the hearings saying, "Frankly, we don't know how he is going to rule on Roe versus Wade and, frankly, we don't know how he is going to rule on many of the topics that will come before him." That perhaps is in line with the canon of ethics in the legal profession. It perhaps is in line with regard to the process that we have gone through for previous judges. But the simple fact is we come to the floor without being able to report to you precisely how the judge will rule on a variety of cases.

Mr. President, I think we have to look from there to his qualifications. The Bar Association has stated their review thoroughly.

The Bar Association has reported to this Chamber that they find that Judge Thomas possesses the highest levels of professional competence, judioial temperament, and integrity. His background I think comes to this Senate as a thorough and broad one, with a wide range of experiences.

I think the bottom line question though has to be what kind of values he will bring to the Supreme Court. Each of us has our own values that we will judge that measure by. But as I look through the judge's record and the testimony, this series of questions stood out in my mind.

Senator SIMON asked Judge Thomas this question:

I see two Clarence Thomases: one who has written some extremely conservative and I would even say insensitive things * * * and then I hear the Clarence Thomas with a heart. * * * which is the real Clarence Thomas?

Judge Thomas responded this way:

Senator, that is all a part of me. You know, I used to ask myself how could my grandfather care about us when he was such a hard man sometimes. But, you know, in the final analysis, I found that he is the one who cared the most because he told the truth, and he tried to help us to help ourselves. And he was honest and straightforward with us, as opposed to pampering us, and he prepared us for difficult problems that would confront us.

Mr. President I believe that Judge Thomas has the values of hard work and integrity, of perseverance, that this country honors and respects. I believe he has those values that will reflect well for the future of this Nation.

Martin Luther King said it best. He said:

My dream is that my little children will grow up in a world to be judged on the content of their character, rather than the color of their skin.

If we judge Judge Thomas on the content of his character, I believe he should be confirmed by the U.S. Senate and rise as an Associate Justice of the Supreme Court.

The PRESIDING OFFICER (Mr. CONRAD). The Senator from Arkansas is recognized.

Mr. BUMPERS. I thank the Chair.

(The remarks of Mr. BUMPERS pertaining to the introduction of S. 1755 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, FISCAL YEAR 1992

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (H.R. 2521) making appropriations for the Department of Defense for the fiscal year ending April 30, 1992, and for other purposes.

The Senate resumed consideration of the bill

Pending:

Division 2, to reduce the amount provided for the rail garrison MX missile program, of Sasser Modified Amendment No. 1193.

Mr. INOUYE. Mr. President, what is the time situation?

The PRESIDING OFFICER. The vote will occur at 10:30. There are 14 minutes to be evenly divided.

Mr. INOUYE. Mr. President, I ask unanimous consent that 16 minutes be added to make it a total of 30 minutes, equally divided, and at the expiration of the 30 minutes the vote will commence.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE AMENDMENT BEGINNING ON PAGE 34, LINE 10, AS AMENDED

Mr. INOUYE. Mr. President, I ask unanimous consent that the committee amendment on page 34, line 10, as amended by the Levin amendment, be adopted and that the committee amendment, as amended, be regarded for the purpose of amendment as original text, provided that no point of order shall be considered to have been waived by agreeing to this request.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SASSER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. EXON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

DIVISION 2, AMENDMENT NO. 1193, AS MODIFIED

Mr. SASSER. Mr. President, how much time is now remaining?

The PRESIDING OFFICER. There are remaining 14 minutes and 20 seconds on your side.

Mr. SASSER. Mr. President, I relinquish 10 minutes to the distinguished Senator from Nebraska, and additional time if he should need it.

Bond	Ford	Metzenbaum
Boren	Fowler	Mikulski
Bradley	Glenn	Mitchell
Breaux	Gorton	Moynihan
Bryan	Graham	Packwood
Bumpers	Harkin	Pell
Byrd	Hatfield	Pryor
Chafee	Hollings	Reid
Coats	Jeffords	Riegle
Cohen	Johnston	Robb
Conrad	Kassebaum	Rockefeller
Cranston	Kasten	Sanford
D'Amato	Kennedy	Sarbanes
Danforth	Kerrey	Sasser
Daschle	Kerry	Simon
DeConcini	Kohl	Specter
Dixon	Lautenberg	Wellstone
Dodd	Leahy	Wirth
Domenici	Levin	Wofford
Durenberger	Lieberman	
Exon	Lott	

NAYS—33

Brown	Heflin	Roth
Burdick	Helms	Rudman
Burns	Inouye	Seymour
Cochran	Lugar	Shelby
Craig	Mack	Simpson
Dole	McCain	Smith
Garn	McConnell	Stevens
Gore	Murkowski	Symms
Gramm	Nickles	Thurmond
Grassley	Nunn	Wallop
Hatch	Pressler	Warner

NOT VOTING—0

So, division 2 of amendment No. 1193 was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMITTEE AMENDMENT ON PAGE 4, LINE 5, AS AMENDED

Mr. INOUYE. Mr. President, I ask for the adoption of the committee amendment appearing on page 4, line 5, as amended.

The PRESIDING OFFICER (Mr. LIEBERMAN). If there is no further debate, the question is on agreeing to the committee amendment, as amended.

The committee amendment on page 4, line 5, as amended, was agreed to.

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the committee amendment, as amended, was agreed to.

Mr. STEVENS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

EXCEPTED COMMITTEE AMENDMENTS ON PAGE 43, LINE 1; PAGE 43, LINE 2 THROUGH LINE 25 ON PAGE 44; PAGE 130, LINE 16 THROUGH LINE 22

Mr. INOUYE. Mr. President, I ask unanimous consent that the committee amendments on page 43, line 1; page 43, line 2 through line 25 on page 44; and on page 130, line 16 through line 22, be considered and agreed to en bloc and that the bill as thus amended be regarded for the purpose of amendment as original text, provided that no point of order shall have been considered to have been waived by agreeing to this request.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

The excepted committee amendments on page 43, line 1; page 43, line 2 through line 25 on page 44; and on page 130, line 16 through line 22, were considered and agreed to en bloc.

Mr. INOUYE. Mr. President, I move to reconsider the vote by which the committee amendments were agreed to en bloc and I move to lay that motion on the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The motion to table was agreed to.

ORDER OF PROCEDURE

Mr. INOUYE. Mr. President, I ask unanimous consent that the following 15 minutes be set aside as though in the morning hour to permit three of our colleagues to speak on the Thomas nomination, and it will be 7 minutes for Senator HARKIN, 5 minutes for Senator THURMOND, and 3 minutes for Senator BREAUX.

The PRESIDING OFFICER. Is there objection?

Mr. KASTEN. Reserving the right to object. I wonder if the Senator could include 5 minutes for me as part of this package.

Mr. INOUYE. Mr. President, I amend my unanimous-consent request to make this a 25-minute time period, 5 minutes for Senator GRASSLEY and 5 minutes for Senator KASTEN.

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Under the previous order, the Chair recognizes the Senator from Iowa [Mr. HARKIN].

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. HARKIN. Mr. President, on June 27, I was saddened by the decision of Justice Thurgood Marshall to resign from the Supreme Court. On the Senate floor at that time, I expressed my feelings about Justice Marshall's distinguished career as an attorney and judge. I also expressed my hope that the nominee to replace Justice Marshall be a person who would follow in the path blazed by Justice Marshall.

After the nomination of Clarence Thomas, I openly stated one issue that I particularly wanted the nominee to address, and which would be instrumental in deciding my position on this nomination. That is the question of the fundamental right to privacy in the Constitution.

The right to privacy—the right of each person to decide personal family matters free from government intrusion—is fundamental to our free society. A nominee's view of the right to privacy is a telling indication of his entire approach to constitutional adjudication. A nominee with a broad view of the right to privacy is more likely to vindicate the rights of individuals from governmental excess in other areas. Such a nominee would understand the role of the Supreme Court, in our system of checks and balances, as the last resort for citizens to vindicate their rights. Too often in recent years, the Court has been a rubberstamp to affirm laws and regulations which trample the rights of Americans. Just as I would not vote for a nominee who did not openly support the right to the free exercise of religion or the right to free speech, I cannot support a nominee who does not unequivocally support the fundamental right to privacy.

With this in mind, I have watched the nomination of Clarence Thomas with great interest. I had hoped that a man of his background, who had climbed the ladder of opportunity despite the withering force of racism, a man who benefited from programs and policies intended to redress that discrimination, would grasp the role of the Supreme Court as a bastion of individual freedom. I had hoped that Judge Thomas would understand that the protection of the Court is essential for others to climb that ladder. Unfortunately, it seems likely that Judge Thomas would pull the ladder of opportunity up after him.

Judge Thomas' tenure at the EEOC and his writings on natural law raise serious questions of his commitment to protecting individual rights. I was particularly concerned about his endorsement of Lewis Lehrman's article which would have destroyed the right of privacy with regard to abortion, and would in fact make abortion illegal, even in the case of rape or incest. It would impose a rigid system of Government imposed morality upon women, rather than trusting the wisdom and morality of the women of this country.

He also dismissed Justice Goldberg's analysis of the ninth amendment as a mere invention. That echoes the words of one of the dissenters in the case of Griswald versus Connecticut, which guaranteed the right of married couples to use contraceptives. If Griswald were overturned, the Government could even reach its hand into the bedrooms of married couples. Thomas now says he accepts the right to privacy which was controlling in Griswald. His abrupt change of views at the hearings raises the question in my mind if this is not just a confirmation conversion.

Judge Thomas' testimony before the committee did not dispel my concerns. Thomas apparently repudiated his views of natural law and his endorsement of the Lehrman article, but his wholesale rejection of beliefs which he had repeatedly stated for years is troublesome. Are Thomas's real views the ones he stated in his committee testimony, or are they the ones he stated in years of writing and speaking?

At least as troubling is his refusal to discuss any of the issues which would show how he would approach the criti-

cal right of privacy. Despite his willingness to comment on a variety of other issues, including issues which are in controversy before the Court in the next term, he flatly refused to give the Senate any insight into his thought process regarding privacy. He would not even acknowledge that unmarried people have a privacy right to use contraceptives.

Judge Thomas acknowledged that the case of Roe versus Wade is among the most important cases decided by the Supreme Court in the last 20 years. Yet he claims that he has no personal opinion on the decision in Roe versus Wade. He claimed that he has not discussed this issue in private, even with his wife.

This statement begs credulity. It indicates to me that he does not have the coherent understanding of the Constitution that the American people have the right to expect in a person nominated to the Supreme Court.

I take the responsibility to advise and consent on nominees to the Supreme Court very seriously. This body has a coequal role with the Executive in the process of appointing members of the third branch. The Founders gave this power to the Senate as a check on the power of the Executive to appoint Supreme Court Justices. I believe we have the duty to exercise that power to ensure that the Court remains a bulwark against the violation of the rights guaranteed for each and all Americans by the Constitution. Because I do not believe that Judge Clarence Thomas has the necessary qualifications for this important post, and because the views he has expressed on the constitutional right to privacy are contradictory and muddled, I cannot consent to this nomination. Therefore, I will cast my vote against this nomination of Clarence Thomas to be a Justice of the Supreme Court.

The PRESIDING OFFICER. The Chair recognizes the Senate majority leader.

Mr. MITCHELL. Mr. President, I am about to ask that action be taken with respect to a measure dealing with the power of Indian tribes to exercise criminal jurisdiction over Indians. I am advised that the matter has been cleared.

Mr. INOUYE. Mr. President, it passed unanimously.

EXERCISE OF CRIMINAL JURISDICTION OVER INDIANS

Mr. MITCHELL. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on H.R. 972.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the House disagree to the amendments of the Senate to the bill (H.R. 972) entitled "An Act to make permanent the legislative reinstatement, following the decision of Duro against Reina (58 U.S.L.W. 4643, May 29, 1990), of the power of Indian tribes to exercise criminal jurisdiction over Indians," and ask a conference with the Senate on the disagreeing votes of the two Houses thereon.

Ordered, That Mr. Miller of California, Mr. Richardson, and Mr. Rhodes be the managers of the conference on the part of the House.

Mr. MITCHELL. Mr. President, I move that the Senate insist on its amendments, agree to the request of the House for a conference on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

The motion was agreed to; and the Presiding Officer (Mr. LIEBERMAN) appointed Mr. INOUYE, Mr. DECONCINI, Mr. BURDICK, Mr. DASCHLE, Mr. CONRAD, Mr. REID, Mr. SIMON, Mr. AKAKA, Mr. WELLSTONE, Mr. MCCAIN, Mr. MURKOWSKI, Mr. COCHRAN, Mr. GORTON, Mr. DOMENICI, Mrs. KASSEBAUM, and Mr. NICKLES conferees on the part of the Senate.

Mr. MITCHELL. Mr. President, I move to reconsider the action by the Senate.

Mr. INOUYE. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MITCHELL. I thank my colleagues for their courtesy in this matter.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUYE. Mr. President, I wish to announce that the conference just referred to in the motion will be held at 12 noon in Senate Russell 485.

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from South Carolina [Mr. THURMOND].

THE NOMINATION OF JUDGE CLARENCE THOMAS, OF GEORGIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

Mr. THURMOND. Mr. President, tomorrow, the Senate Judiciary Committee will consider the nomination of Judge Clarence Thomas for a position on the Supreme Court. I rise today to voice my strong support for President Bush's nominee to be an Associate Justice of the Supreme Court of the United States.

The Judiciary Committee conducted thorough and extensive hearings which lasted 8 days. Judge Thomas testified before the Committee for almost 25 hours, longer than any other Justice confirmed in the last 10 years. We heard testimony from approximately 100 outside witnesses. I was most impressed by those who personally knew Judge Thomas and who oould attest to his outstanding qualities.

Mr. President, a nominee to the Supreme Court must have the ability to master the complexity of the law. Judge Thomas clearly has the intellectual capacity to sit on our Nation's highest court. The American Bar Association's Standing Committee on the Federal Judiciary carefully scrutinized the professional competence, integrity, and judicial temperament of Judge Thomas. The ABA found Judge Thomas to be "qualified," defining that standard as follows: "The nominee must have outstanding legal ability and wide experience and meet the highest standards of integrity, judicial temperament, and professional competence." In addition, the ABA noted that Judge Thomas' "wide set of life and professional experiences * * * suggest a special capacity for personal growth and professional wisdom."

Mr. President, we are all aware of Judge Thomas' background. He has overcome difficult circumstances he faced early in life—both the anguish of poverty and the humiliation of discrimination. I believe that Judge Thomas' background gives him the sensitivity to understand the impact of his decisions on those parties before the Court. His life experience shows he is a man of courage who will bring an added dimension to the Supreme Court.

In summary, Judge Thomas has been thoroughly scrutinized by the Judiciary Committee. Throughout Judge Thomas' testimony, I believe he demonstrated that he possesses the attributes of a Supreme Court Justice: A keen understanding of the law, the intellectual capacity to deal with complex issues, fairness, patience, and a willingness to be openminded.

I am convinced that Judge Thomas will make an outstanding addition to our Nation's highest oourt. Mr. President, I will vote in favor of this nominee for a position on the Supreme Court.

I hope the entire Senate will vote to confirm this splendid man.

CLARENCE THOMAS NOMINATION

Mr. BREAUX. Mr. President, the hearings on the oonfirmation process of Judge Clarence Thomas are now completed. We have heard from the nominee. We have heard from those who are in opposition to his confirmation. And we have heard from those proponents who are supportive of his confirmation.

It is now time for us, as the full Senate, to decide what our position is going to be.

I plan to vote to oonfirm Clarence Thomas' nomination to the U.S. Supreme Court. I have met with Judge Thomas in my office privately, and I have listened to the extensive hearings conducted by Senator BIDEN and Senator THURMOND and the other members of the Judiciary Committee.

I am convinced that following all of this material, Judge Thomas is a person who will remember not only the law, but will also remember where he

has come from and what he has been able to achieve and how he has been able to get where he is today, when he applies the law.

I have been impressed, in my conversations, with his intention to be his own man as a member of the Nation's highest Court. Some have suggested that when he was head of the EEOC, he did not do enough. I would only respectfully remind them when he was head of the EEOC he worked for Ronald Reagan and he was required to carry out that administration's policy, not the policies of Clarence Thomas.

As a Supreme Court Justice, he will have the opportunity and, indeed, the obligation to carry out the laws of this country as he feels they should be applied. He will not be an employee of any administration, but he will be a free man, able to exercise his best judgment.

Some argue that he is not the best choice. But I would remind them that it is the President's nominee that we are considering, and I am willing to confirm that choice based on my best consideration of how he will serve our Nation.

I wish him the very best in his upcoming duties following his confirmation.

The PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from Iowa [Mr. GRASSLEY].

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. GRASSLEY. Mr. President, tomorrow the Judiciary Committee will be considering the nomination of Judge Thomas for the Supreme Court. And at tomorrow's hearing, I will elaborate on my reasons for supporting his confirmation, even though I have already, earlier this week, announced my support for Judge Thomas.

In the meantime I want to take issue with some of my colleagues who have announced that they will vote against Judge Thomas. We had, Mr. President, as you recall, 8 days of committee hearings, and 5 of these days, Judge Thomas testified on his own behalf. He showed himself, as I remember those 5 days of hearings, to be one well versed in the law; to be thoughtful; to be honest; and most importantly, to be openminded.

He talked about the countless speeches that he had given as a policymaker and articles that he had written during his 10 years of service in the executive branch.

Even after all this, some of my colleagues seem to continue to be troubled by those articles and by those speeches. They disagree with what he wrote as a policymaker.

Certainly, they have every right to disagree with what statements he made as a policymaker that they might disagree with. But the question has to be: Do the views that he articulated as a policymaker indicate any lack of regard for the Constitution of the United States, that he will take an oath, and has taken an oath, to uphold?

I submit, this nominee, Judge Thomas, has a deep and abiding respect for the Constitution. His record as a Federal appeals court judge demonstrates his fidelity to the law.

I would like to address something my colleague from Iowa just stated on the floor of the Senate. I think that my colleague is simply wrong about Judge Thomas' record. Take the issue of privacy. Judge Thomas said the Constitution protects the fundamental right of privacy. I heard it myself, Mr. President, and in response to a written question to Senator BIDEN, Judge Thomas said the Eizenstat case, finding the right to privacy extends to single persons, was properly decided on equal protection and privacy grounds. That, Mr. President, is a clear and unambiguous statement supporting the right of privacy.

I sat through all the hearings, and perhaps if colleagues who are coming out against him had the privilege, as I do, of sitting on the Judiciary Committee, they would have a fuller appreciation of Judge Thomas' record.

It is an interesting dilemma, Mr. President, because Judge Souter was accused of being a stealth nominee because he had no paper trail. Now we have a nominee who has been deeply engaged in public policy debate, and that appears to disqualify him for the high court, in the opinion of some of my colleagues.

Judge Clarence Thomas is a worthy nominee for the Supreme Court. He was sometimes a combative bureaucrat and an advocate for certain policies, but he has already shown himself to possess the qualities of a judge. When he puts on the robes of an empire, then he leaves his advocacy behind him. He has done it on the appellate court for the last year and a half, and I am confident that he will continue to show such discipline, as he has called it, on the Supreme Court.

For my colleagues who have not yet made up their minds on Judge Thomas, I urge them to review the transcripts of the hearings and to take a look at a few of his 18 legal opinions, read his discussions with so many of us on the important topics like the role of President, the separation of powers issue, natural law, and affirmative action. And if my colleagues do this, I am very confident, Mr. President, that they will find a nominee who knows the law, understands his role as a judge within our democratic system of government, and one who will be an asset to the Supreme Court of the United States.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Wisconsin [Mr. KASTEN].

IN SUPPORT OF JUDGE THOMAS

Mr. KASTEN. Mr. President, one of the most important duties of a U.S. Senator is to exercise vigilance over the quality of appointments to the Supreme Court. I am proud to announce that in carrying out this duty I have determined that Judge Thomas is eminently qualified to serve on the U.S. Supreme Court as an Associate Justice.

The Supreme Court is the chief guardian of the liberties of the American people. Without the checks that it provides in our system of checks and balances, individuals would be under constant threat of having their liberties eroded by uncontrolled majorities. A democratic society needs this check on the majority if the rights of all citizens are to be protected.

The full Senate will soon decide whether to offer its advice and consent to the nomination of Judge Clarence Thomas to the Supreme Court. After studying his record, and the testimony before the Senate Judiciary Committee, I am convinced that he will do honor to the Court—and I will vote to confirm his nomination.

The background of Judge Thomas has made him an ideal candidate for service on the Court. He has the intellect and varied experience that will serve him well as a Supreme Court Justice.

As a young man, he experienced discrimination. He saw black citizens—including members of his own family—denied their rights by white majorities. He saw the instruments of governmental power used against the human dignity of citizens—just because they were black. This is a man who has personally experienced injustice.

But young Clarence Thomas—faced with this extreme adversity—did not despair of the American system. He believed that if only we would apply the idealistic roots of our Declaration of Independence—of our Constitution and its Bill of Rights—we could reform the system and protect the rights of all Americans.

Some have insisted on knowing how Judge Thomas would rule on various specific issues. I suppose a number of us would like that, but I do not believe that such questions are appropriate. Instead, he has been forthright in his answers, he has not prejudged the issues he will hear, and he will set his personal views aside as a member of the Court.

Most important, I believe he will bring to the Supreme Court his considerable intellect, his independence, and his integrity.

Judge Thomas believes in the system of liberty under law. He recognizes, and spoke to, the different functions of our three branches of Government. He has served in all three branches, and understands that the role of the judiciary is to interpret the laws, not make the laws.

Clarence Thomas overcame adversity and graduated from Yale Law School, one of this Nation's preeminent legal institutions. He has served in both the public and private sectors with distinction. Judge Thomas was confirmed by this body for what most believe to be the second highest court in the land, with only two Senators expressing their disapproval.

I hope that our vote on his Supreme Court nomination will be equally overwhelming, because Clarence Thomas is truly an outstanding nominee.

This is a man who knows about injustice. This is a man we can trust to protect the liberties of the American people as an Associate Justice of the U.S. Supreme Court.

Mr. INOUYE. Mr. President, I ask unanimous consent that the Senator from Connecticut [Mr. LIEBERMAN] be permitted to speak for 5 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. INOUYE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. INOUYE). Without objection, it is so ordered.

CRIME IN OUR STREETS

Mr. LIEBERMAN. I thank the Chair particularly for his normal graciousness.

Mr. President, this past weekend, more people were murdered by criminals in the streets of American cities than were killed in the Yugoslavian civil war. The scale of bloodshed is almost beyond belief. I rise to speak this morning because it has hit close to home in the State of Connecticut. Right in my hometown, New Haven, last Saturday night alone, thugs drove by a popular New Haven diner in which 200 people were sitting and sprayed semiautomatic gunfire into a crowd of 50 people standing outside. Two people were killed and one was wounded. A robber at a convenience store was killed on that same night and two store employees were wounded. Three other young people were shot at difference places in New Haven on that same night.

Mr. President, it is sadly telling that this kind of carnage has become so oommonplace that it does not merit more than a mention, if that, in our national newspapers. Can we really have become so numb to this kind of violence and terror that drive-by shootings are now a routine part of our national landscape?

Consider this almost unbelievable tale of recent crime in New Haven: Two people in a New Haven church are kneeling in pews, peacefully praying. In walks a man who pulls a gun and robs them. And then there is my neighbor who lives just down the street, four houses away from me in New Haven, who 2 weeks ago was held up at the point of a gun in his own house in the middle of the night, held as a captive, as a hostage, for an hour.

Everyone nowadays personally knows someone who has been a victim of a violent crime, and soon enough, I fear, all of us may become victims ourselves. In a sense we already are. We are victims when we are afraid to go out of our homes at night or to venture out of our neighborhood. We are victims when we are afraid inside our homes and have to invest money in all sorts of locks and burglar alarm systems to make us feel safe.

We are victims already when we pay the price for prisons, prosecutors and police to keep up with the spiraling demand for justice.

What can the Federal Government do about this growing and terrible problem of crime in our country? How should we in Congress address this very reai concern?

Well, it is true that the front lines in the war on crime are at the local level. That is where our system of justioe must first oonfront the criminals on the street. But the Federal Government can and must do more to beef up America's criminal justice system, commit more resources to Federal prosecutions and prisons, promote new efforts to attract people into the police profession and streamline and toughen laws so that justice works for victims, not just for criminals.

Here in the Senate, we passed a good crime bill last July. It contained some very powerful weapons that can be used in the war on crime. It authorized funding for 10,000 new local law enforcement officials; it provides for the construction of 10 regional prisons to contain 8,000 drug offenders who are so much a part of crime on our streets today; it calls for the conversion of 10 closed military bases into prison boot camps for criminals.

Our crime bill includes some tough sentences for those who commit violent crimes using guns. It sets out stiff mandatory sentences for those convioted of murdering or injuring anyone in a drive-by shooting, and it includes a ban on the manufaoture, sale and possession of especially deadly assault weapons. It also includes other measures designed to keep guns out of the hands of criminals.

Our Senate crime bill reforms habeas oorpus to prevent prisoners from making a mockery of our courts by filing one frivolous appeal after the other. And the crime bill creates a Police Corps, which is a scholarship program for students who agree to serve for a minimum of 4 years in a State or local police force after graduation.

Mr. President, it appears, unfortunately, that this crime bill passed by the Senate is bogged down in the other body. That is the last thing my constituents or any people in America want or need. We cannot become so used to crime, so blinded by its prevalence that we shy away from tough, hard solutions. The orime bill must not languish while society suffers, for violent crimes harms more than its victims. It tears at the fabric of our society. It pulls us apart, instills fear and despair, and it is a destroyer of hope for our children and their future. It afflicts everyone, rich or poor, white or black, young or old, city resident or suburbanite.

Mr. President, what more important responsibility does Government have than to maintain that minimum degree of order without which there cannot and will not be real freedom and to ensure that people can live their lives without the constant nagging fear of violence? It is a responsibility, a sacred responsibility which we are entrusted to fulfill. Therefore, Mr. President, I rise this morning to urge quick and positive reaction, action by the other body and then by the full Congress, on a strong and effective crime law, anticrime law, before it is literally too late for America.

I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative olerk proceeded to call the roll.

Mr. INOUYE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. LIEBERMAN). Without objection, it is so ordered.

DEPARTMENT OF DEFENSE APPROPRIATIONS ACT, FISCAL YEAR 1992

The Senate continued with the consideration of the bill.

EXCEPTED COMMITTEE AMENDMENT ON PAGE 100, LINE 4 THROUOH LINE 9

Mr. INOUYE. Mr. President, I believe the next order of business is the committee amendment appearing on page 100, lines 4 through 9. Am I oorreot?

The PRESIDING OFFICER. The Senator is correct. The pending question is on the committee amendment on page 100, lines 4 through 9.

Mr. INOUYE. I ask unanimous consent that that committee amendment be temporarily set aside to permit consideration of the McCain amendment on the SSN-21, the Seawolf.

I ask unanimous consent that the Senate set aside 75 minutes for this debate to be equally divided, and that at 1 o'clock p.m. this afternoon a vote be held.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Staff, dated August 1. We are dealing with the Wirth-Mack amendment, so certainly this is not a surprise.

In that letter, Mr. President, the Joint Chiefs or the Joint Staff—I am not sure whether that means the Joint Chiefs or whether it is some branch of their office—they make a point not of disoussing whether or not this is appropriate legislation, but in paragraph 3(c) they say, "In support of the Middle East peace process, Egypt has proposed a suspension of the Arab League boycott in exchange for a freeze of Israeli settlements in the occupied territory."

They go on to say further, "This legislation could bolster Israeli intransigence and complicate the administration's effort to encourage the peace process."

The question then has to be put very clearly, is the reason we are doing this to relieve us of so-oalled Israeli intransigence? Is that the reason that this amendment is objected to? Is there some sinister purpose to it that says that, no, we are not just interested in having foreign companies abandon the Arab League economic boycott? Is it part of the grand scheme to force Israel into making concessions before they get to the peace table? I do not think that is an appropriate addendum to the bill for appropriations for defense.

So I ask the Senator from Alaska, the distinguished ranking member of the subcommittee, to permit us to move forward on this, to say that, no, we will not in any way, directly or indirectly, participate in a boycott of our good friend and staunch ally, Israel. I find it distressing that information is introduced here that talks about the peace process, and that arguments against the amendments are made on behalf of legislation on appropriations, of disrupting our ability to function, and suggesting that it might be inconvenient not to do business with Saudi Arabia.

Mr. President, we have all seen in the last couple days that the Saudis have not yet fully paid their bill to the United States from the war and there is pretty good cash-flow in Saudi Arabia, as you can see every day from the amount of oil we buy. There is some $3 billion owed to us by the Kuwaitis and also $3 billion owed by Saudi Arabia. I do not know when we sent the troops there what kind of service they were buying, but there was a debt incurred on behalf of salvation of their country and protection of their people and we have to worry about who we are dealing with appropriately with Saudi Arabia?

Mr. President, if it were not so serious, it would sound like a comedy. We ought to get on with establishing the fact that this country, this free democracy, is unalterably opposed to the boycott and we will not do business with anybody, that complies with that boycott.

The PRESIDING OFFICER. The Senator from California is recognized for 10 minutes.

Mr. SEYMOUR. Thank you very much, Mr. President. I appreciate the opportunity to be recognized as if in morning business, and so ask unanimous consent.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF CLARENCE THOMAS

Mr. SEYMOUR. Mr. President, I rise today to discuss a matter that will soon be before us here in the Senate and that is the nomination of Judge Clarence Thomas to the U.S. Supreme Court.

I am not a member of the Judiciary Committee, but, like many of my colleagues and millions of Americans, I watched Judge Thomas' testimony before the Senate Judiciary Committee with great interest. I focused on three areas. First, how Clarence Thomas has been as a judge. Second, how would he serve as an Associate Justice. And, third, who is he as a man and as an American.

The Judiciary Committee examined nearly every facet of Judge Thomas' professional life as well as his judicial temperament. On all counts, as he described his background, his qualifications to serve on our Nation's highest court, it became clear and more compelling to me that he should be confirmed.

As a nominee to the Supreme Court, Judge Thomas has clearly and correctly stated that the high court is not a forum for advocacy, but it is a body where respect for the law and equal justice are paramount.

Furthermore, I think it was and is appropriate that Judge Thomas did not prejudge how he would decide controversial issues that could very well come before the Court in the ooming years. Those decisions should be based on the law and the facts that are presented before the Court, not on a personal preference, an attitude, or some ideologio litmus test. If you are going to be an umpire at a baseball game, you do not call a ball or a strike until the ball has been thrown over the plate, and, in spite of repeated attempts by some committee members to get him to commit to a viewpoint or a position before all of the facts are before him, I personally am pleased and proud of Judge Thomas that he maintained an independent, fair-minded, and unbiased stance. And is that not what we all want and is that not what we should all ask of him or any other nominee to our highest Court in the land? Let me say that that precedent has been historic of all of our nominees to the U.S. Supreme Court, including the oonfirmation of Thurgood Marshall, whom Judge Thomas will replace.

Mr. President, I think that everyone by now is aware of the remarkable personal accomplishments that Clarence Thomas has made. Certainly, the fact that he has overcome adversity in life should not be the deciding factor in making a decision to appoint him to the Supreme Court or for any other position. But character is a yardstick by which we can take the measure of a man. It can give you an indication of how he will carry himself professionally and personally.

That character came through clearly to me when I met with Clarence Thomas. I was impressed by his integrity, his independence, and his remarkable life story. Rising from the poverty of his youth and overcoming discrimination, he is a man who has pulled himself up by his own bootstraps, and he is a role model for all Americans whether they be white, black, Asian, or Hispanio, young or old.

For months, Americans have learned the story of Clarence Thomas—his accomplishments as a judge, his ability as a justice, and the content of his character. I am convinced that Clarence Thomas will bring a firm commitment to equality and justice to the Supreme Court—a commitment that is rooted in his personal experience with overcoming injustice and inequality. I have no doubt that Clarence Thomas will serve this Nation well, and that is why I will vote to confirm this extraordinary man as an Associate Justice of the Supreme Court.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized for 5 minutes.

Mr. RIEGLE. Mr. President, I think I am to be recognized for 5 minutes. I ask unanimous consent that that be extended to 10 minutes.

The PRESIDING OFFICER. Is there objeotion? Without objection, it is so ordered.

The Senator from Michigan is recognized for 10 minutes.

POVERTY AND HEALTH CARE

Mr. RIEGLE. Mr. President, I want to first draw attention to an item that has just come across the tickertape on the wire out here. It says the following. This is on the UPI wire.

The number of people in poverty rose sharply in 1990 to 33.6 million, a jump of 2.1 million, and the median income of the American family dropped to under $30,000, the Census Bureau said Thursday.

It goes on.

The Census report put the U.S. poverty rate at 13.5 percent, up a dramatic 5.5 percent, its highest level since 1986 and well above the level of the early 1970's when the Great Society's war on poverty programs were at their strongest.

SENATE—*Friday, September 27, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 9 a.m. on the expiration of the recess, and was called to order by the President pro tempore [Mr. BYRD].

The PRESIDENT pro tempore. The prayer will be led by the Chaplain, the Reverend Dr. Richard C. Halverson.

Dr. Halverson, please.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

* * * *it is required in stewards, that a man be found faithful.*—I Corinthians 4:2.

Almighty God, appropriations time is never easy or simple in a democracy. There are so many more legitimate needs than can possibly be met, the task is overwhelming. We pray for the committee staffs and their directors who, behind the scenes, work 'round the clock to prepare bills and amendments which are adequate and equitable. Thank You, Father, for the endurance of these men and women whose work does not end with daily recess and often begins long before the Senate opens and continues through recess periods. We ask for Your blessing, Your grace, Your wisdom, Your patience to be their's as they labor tirelessly to get the job done and make the Senators look good on the floor.

Thank You, gracious Father, for all of the men and women who support the system in every conceivable way, in offices and throughout Capitol Hill, as the Senators exercise their leadership responsibility to their constituents, their Nation, and the world. Grant to these, Your servants, a special sense of fulfillment and satisfaction.

We pray in the name of the Servant to servants. Amen.

RESERVATION OF LEADERSHIP TIME

The PRESIDENT pro tempore. The Senate will be in order.

Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. There will now be a period for the transaction of morning business with Senators permitted to speak therein.

The following Senators will be recognized to speak for the time indicated, and in the order listed: The Senator from Delaware [Mr. BIDEN] for not to exceed 30 minutes; the Senator from Colorado [Mr. WIRTH] for not to exceed 20 minutes; and the Senator from Tennessee [Mr. GORE] for not to exceed 20 minutes.

Mr. BIDEN is recognized for not to exceed 30 minutes.

OPPOSITION TO THE CONFIRMATION OF CLARENCE THOMAS

Mr. BIDEN. Today, Mr. President, the Judiciary Committee will vote on its sixth Supreme Court nomination in 5 years. As no one knows better than the Presiding Officer, each of these votes are solemn occasions. For this Senator, there is no question that the nominee we are about to vote on is a man of high character, competence, and has sufficient legal credentials and credibility.

But, Mr. President, for me, the question that concerns me the most, Judge Thomas' judicial philosophy—not his ideology—his philosophy, the approach that he would bring to the bench in deciding how to interpret the ennobling phrases of the Constitution, those parts of the Constitution, as the Presiding Officer knows better than anyone in this body, that have been matters of contention, concern, disagreement, and ambiguity for over 200 years in this great Republic.

A year ago, during the Senate's consideration of Justice Souter's nomination, I made it clear with respect to judicial philosophy that I believed—and it is a strong phrase—but that the burden of proof is on the nominee to demonstrate his or her sultability for the Court, and to clearly lay out for us their methodology—how they would approach the interpretation of the Constitution.

Just as the nominee must persuade the President that he or she is the right man for the job before the President is willing to nominate someone for the Supreme Court, it seems to me a nominee must persuade the Senate in the same way that he is the right person for the Supreme Court before he receives our votes for confirmation.

It is with heavy heart, Mr. President, because I come to these matters with a strong desire to want to support the nominees. I have on rare occasion opposed nominees for the Supreme Court. Unfortunately, this is one of those occasions.

There are three reasons why I believe Judge Thomas has not met the standard that should be required of any Supreme Court nominee before he receives the vote of the majority of the Senate to consent to the nomination suggested by the President to the Court.

First, there is the question of the adequacy of Judge Thomas' responses to the Judiciary Committee questions. Many have expressed frustration at the lack of Judge Thomas' responsiveness to the committee's questions. Others have said that vagueness and imprecision in responding is inevitable because such an approach has become the most likely path for nominees to confirmation. The fact is that the Judiciary Committee cannot force a nominee to answer any question.

As I have made very clear on many occasions, only the nominee can decide what questions he or she will not answer. But if this choice is the nominee's to make, the decision about what we do in response to the nominee, the questions asked of the nominee, is ours. It is for the Senate to make.

I cannot force a nominee to complete and engage in answers and discussions about the Constitution, but I am not obliged to vote for the confirmation of a nominee who fails to do so either. Throughout his testimony Judge Thomas gave us many responses but too few real answers.

Let me be olear, Mr. President. I am not talking about his refusal to say how he would vote on Roe versus Wade. I have never asked Judge Thomas that question nor am I opposing him because of his failure to answer the question when it was put to him. Indeed, I am talking of the many constitutional issues, great and small, contentious and settled, on which Judge Thomas declined to comment or made vague statements or provided unclear and uncertain distinctions.

Perhaps this is what some have advised Judge Thomas to do once he was nominated. Perhaps this is what some advised Judge Thomas would be the best route to confirmation. Perhaps they were right about the politics. But it is a political strategy that I do not intend to endorse by voting for Judge Thomas' confirmation.

The second reason for my opposition, Mr. President, is that there is the question of Judge Thomas' overall philosophy. Here much attention has focused on Judge Thomas' view on natural law and his approach to interpreting the Constitution. There has been tremendous confusion I say, Mr. President, about the significance of natural law in this nomination.

It has been said that I, JOE BIDEN, wanted to condemn Judge Thomas for

embracing natural law which he had done repeatedly in his 180 speeches or so that he submitted to the committee. But nothing could be further from the truth.

I may be one of those few Senators who believe that natural law should and does inform the Constitution. I believe that natural law prinoiple that most conforms to the Constitution is the notion of limited government, the notion that I derived my rights because I exist but not from a piece of paper that has been jointly agreed upon by my ancestors.

I have rights because I exist, not because my Government gave them to me. I, in an editorial sense, gave my Government the power in certain areas, a limited power, over me and my fellow man.

So I, JOE BIDEN, believe that the notion of natural rights and natural law informs the Constitution. Indeed, it was this very question that was the major source of my disagreement with Judge Bork, who took a principled and opposite view from the one I have just stated.

The question for me with respect to Judge Thomas has always been: Which natural law principles did he embrace, and what did he mean when he said natural law? Was he talking about some moral code handed down upon high that supersedes or clarifies the ambiguous phrases of the Constitution? If that is what he meant, I had a real problem.

Here I think too much attention has been placed upon the label "natural law," and too little on the substance of what is really at issue here. For a moment, let us put aside the label of natural law, and let us look at the constitutional philosophy Judge Thomas has espoused without respect to what it is named.

Judge Thomas has praised some extreme ideas about economic rights, ideas which, if applied as their authors intended, would invalidate virtually every single modern legislative scheme regulating the eoonomy, environment, and the workplace, as so stated by the authors of these views, who Judge Thomas cites and gives a great deal of praise to—not only them, but their views.

He has endorsed, as well, a rigid view of separation of powers, whioh no one better than the President pro tempore knows if that rigid view of separation of powers is, in fact, held by him, it is an idea which, if fully implemented, would radioally restructure our Government and its laws and result in a radical transformation and transfer of power from one branch of this Government to another.

The ideas that Judge Thomas embraced are part of an ultraconservative agenda, not a normal, not a mainstream conservation notion, but an ultraconservative agenda to use the courts to fundamentally alter the legal framework within which the Government operates.

This is what one of the spokesmen for that agenda, a Wall Street Journal columnist, had to say several days ago about the Thomas nomination:

Mr. Biden most likely brought up the previously arcane subjects of property rights and separation of powers in the hopes of tripping up the Thomas nomination.

I note parenthetically that that is not true—

Whatever the reason, at least Mr. Biden elevated these issues. Mr. Biden is also probably right to be worried. Don't be surprised if, when the cases reach the Supreme Court, Justice Thomas indeed becomes a second Justice Scalia.

Nothing could state my conclusion about this nominee's judicial philosophy more succinctly than the Wall Street Journal columnist, who is an ardent supporter of this nomination. But, of course, it should be noted for the record that Judge Thomas went out of his way at the hearings to assuage these fears. He told us that he had no agenda for the Supreme Court; that he had no disagreement with the Court's approach to economic rights and those cases involving them; that he had no idea of the full agenda behind the separation of powers view he had endorsed in his speeches.

Mr. President, I say with all sincerity that I believe his statements. I do not question his statements at the committee hearing in any way. I believe Judge Thomas when he said he has no checklist of cases to be overruled, and when he says he never meant to advocate the full range of implications one could draw and would have to draw from his remarks and the comments he made citing the people who hold these views.

By the way, the people who hold these views are bright, intelligent, deoent Americans, but whose views are radically different than the way in which this country has conducted itself this century and, I would argue, for a long time, with one notable period during the Lockner hearing as an exception.

But the question is, to use one of the favorite phrases of Judge Thomas' supporters, 70 or 80 of whom came before my committee, the question is: Will Judge Thomas grow into the court? What views will grow into the court?

I believe Judge Thomas does not now have an agenda but, with these predispositions, I wonder what sort of approach he will have once he acquires a point of view. This is the point that I found to be of constant ooncern during the hearings.

As I said in the final days of Judge Thomas' testimony, after he had once again distinguished between his views as a policymaker and his views as a judge:

You are going to be the judge, a judge who has nothing at all that would bind you other than your conscience; and so I am a little edgy when you say, "Well, that's the policy"—

Referring to the Court—

"That's the policy," as if you are still going to be a circuit court appeals judge, where you have to follow that policy. You are going to take a philosophy to the Court with you under which you are not limited from reaching a conclusion different than that which the Court has reached thus far.

After a subsequent exchange, Judge Thomas finally responded:

The point that I am trying to make is that when I say I don't have an agenda, I mean I don't have an agenda. I operate that way as a court of appeals judge, and that's the way I would funotion as a member of the Supreme Court.

Well, in my view, Judge Thomas' answer fails to grasp the essential difference between the role of a court of appeals judge and a Supreme Court Justice. A court of appeals judge applies the law and cannot change it, has no right to change it, is sworn not to change it, and cannot change Supreme Court rulings. A Supreme Court Justice is not so limited, when it comes to applying our Constitution or looking at stare decisions. Would Judge Thomas take the views hinted at in his speeches and writings and apply them to their full extent and conclusion as a Justice of the Supreme Court? Is the columnist on the mark when he says that I am right to be worried about this possibility?

This for me is the single most difficult question to resolve with respect to the nomination of Judge Thomas. The major object of Judge Thomas' testimony is to reassure us, to reassure me, among others, not to worry; but the major effect of his writings on these matters is to give great cause for concern.

Where such doubts exist and where such answers were incomplete in the face of the writings, unlike Justice Souter, who did not have and make such statements, where such doubts exist, I cannot vote my hopes. I cannot vote to oonfirm the nominee.

Others who know Judge Thomas, to whom I have referred—I do not want to be pejorative—within this new significant view as to how to interpret the Constitution, are they on the mark when they say I am right to be worried? I suspect I cannot take the chance. There is too much at stake for me to take a chance, too muoh at stake for this Nation, in my view, as one newspaper has urged, "to take a leap of faith."

Judge Thomas' writings sketch for us a judicial philosophy which, if fleshed out and applied with force, would be a disaster for the balance this country has struck between the rights of individuals and the rights of businesses and corporations.

I believe him when he tells us that he has no current plans to take his views to this extreme and that he comes to

the Court with no agenda. But based on listening to him, he comes to the Court with no fleshed-out philosophy, either.

He has these writings, Mr. President, which will lead one to normally believe that he has a very fleshed-out view. He has come to the hearings and said in honesty, and convinced me, that he does not have a fully formed view. And, as a matter of fact, he has convinced me he does not have a view on many, many important aspects of constitutional interpretation.

But I cannot gamble on what will happen once he arrives at the Court with the few views he has that disturb me, and a lack of articulation of what the remainder of the broader constitutional interpretive scheme he reviews would be. It is a risk I am not prepared to take.

Finally, there is a specific issue of greatest concern to me, and that is protection of privacy and unenumerated rights, and what we know of Judge Thomas' views in this area.

Here we acknowledge that almost every word uttered by Judge Thomas in the years prior to nomination was hostile to these concepts of unenumerated rights. This is not to say that he had come to any final or firm conclusion about them in his writings, because those who said he did, I believe, were not correct. He did not.

I do not agree with those who have sought to draw such stark conclusions from several paragraphs—more than several paragraphs, but paragraphs in various important speeches he made. Some, for example, told the committee that they are absolutely convinced that they can tell what Judge Thomas' views of the Constitution and the question of constitutional protection for a woman's right to choose would be. They draw that conclusion on the basis of a half dozen or so statements made in speeches and articles.

As I said at the hearings, I disagree with the viewpoint of some of his opponents. I have studied his writings, I suspect, as closely as any person has ever studied his writings. I have listened closely to the testimony at the hearings. And I have concluded it is simply impossible to tell with certainty what his views are on this matter or on a number of other questions of constitutional interpretation.

Nevertheless, it remains true that, to the extent that Judge Thomas has commented on these issues relating to unenumerated rights and the privacy cases, these comments have been almost entirely negative. In particular, Judge Thomas strongly suggested that he and I do not share a common vision of personal freedom. As he put it on one of the two occasions on which he spoke to this matter, and I quote him:

> The conservative failure to appreciate the importance of natural rights * * * culminated in the spectacle of Senator Biden [following Judge Bork's defeat] crowing about his belief that his rights were inalienable. * * *
>
> We cannot expect our views of civil rights to triumph by conceding the moral high ground to those who confuse rights with willfulness.

Obviously, he is entitled to that opinion. I respect it. But, again, this is far from a definite rejection of the notion of the theory of privacy. But although it is not a definitive rejection of the theory of privacy and unenumerated rights, it is a sharp criticism of an approach that embraces an expansive view of these questions.

What did Judge Thomas say about this matter at the hearings? Judge Thomas did make it very clear that he agreed with the Court's ruling in Griswold versus Connecticut, a case that the Chair is fully familiar with, and in the question of a marital right to privacy. But with respect to the scope of the right to privacy, the source of that right to privacy and the nature of an individual's right to privacy, Judge Thomas remained consistently evasive, which is his right, even after repeated efforts by me to give him the best possible chance to assuage my concerns and the concerns of others.

In an attempt for us to more clearly understand his views, I submitted to Judge Thomas after the hearings were over—not in the glare of the lights—a written question on the right of privacy.

My letter recited Judge Thomas' testimony and the confusing testimony, in my view, on this matter during the hearing, and it ended with the following question from me to him, in writing, that he could answer in the cool light of day, without any of the pressure of being under the lights, which is a great deal of pressure, I might add, and he handled it well.

Here is my question and I quote:

> Do you believe that the due process component of the * * * liberty clause—independent of the * * * case of Eisenstadt v. Baird—provides a fundamental right of privacy for individuals, married or single, that includes a fundamental right of privacy with respect to procreation and contraception?

Judge Thomas' answer to the question, in its entirety, was as follows:

> As I sought to make clear my testimony, I believe that Eisenstadt was correct on both the privacy and equal protection grounds.

I explicitly, in my question said—I will read it again—"independent of the case of Eisenstadt." And he answered me like he answered on so many occasions. He said: "I think Eisenstadt was right on both the privacy and equal protection grounds.

Thus, yet again, Judge Thomas failed to answer the question directly or completely, as is his right.

I want to make it clear, and I made it clear throughout those hearings and every hearing that I conducted as chairman of this committee, I am not asking these questions as a pretense for asking about abortion, nor was I trying to use his views on the right to privacy as a stalking horse to determine where the judge might go on that matter.

So why was not Judge Thomas' answer good enough? Does it not make it clear enough that he would invalidate a law, that he would restrict the use of contraception by single people under Eisenstadt? Yes, it does. That was the whole purpose of the question and my repeated attempts during the sworn testimony to get some input on this.

I asked about the right to privacy at some length, not because I think that there is any real chance that any State is going to make the use of contraceptives illegal in 1991, but because I want to see someone on the Court who has an expansive view of personal freedom with respect to the issues that will arise in the Court, and there are many issues that will arise in the Court in the future, some we cannot even contemplate.

It is not good enough that a nominee begrudgingly pledges not to reverse the battles already fought and won. Rather, I am looking for a nominee's disposition with respect to the questions of personal freedom and the questions of personal freedom not yet framed, Mr. President.

I want to make clear that this is not a liberal versus conservative question, nor will it get a liberal-versus-conservative answer. There is no political or substantive reason why President Bush cannot nominate a jurist who would be good on these issues.

Abortion, aside, Mr. President, we all know many conservatives who think that Government should stay out of people's private lives. Probably, the most articulate exponent of that view was Barry Goldwater, Mr. Conservative. He, I and Senator DANFORTH served together for years. This is not a liberal or conservative view. It does not relate to abortion.

Mr. President, thus, there is ample reason to think, in my view, that President Bush could have nominated such a candidate for the Court. Yet, nothing that we know about Judge Thomas suggests that he is such a man.

These are the reasons, Mr. President, why I will not vote to confirm Judge Thomas.

It is not a decision I come to lightly, not is it one that I enjoy making.

Every one of us were impressed by Judge Thomas' personal life story. And, as I said at the outset, I have no questions at all about his credentials, credibility, character, or competence. As a matter of fact, in the first 5 minutes of the hearing, I said I stipulate to all of those.

Indeed, that is why I voted to place Clarence Thomas on the second highest court in the land, and that is why I wish him a distinguished and successful career in that post.

Mr. President, as difficult as this decision has been for me, it is one that I make with firm conviction—but it is a vote that I cast with my head and not with my heart. For I very much wish that I could have come to the Senate floor and announced my support for the nomination of Clarence Thomas, and I acknowledge this is a close call.

During the hearings I found myself impressed by the testimony of Dean Calabresi, of Yale Law School, Mr. President.

Mr. President, I ask unanimous consent that I be able to proceed for 4 more minutes.

The PRESIDENT pro tempore. The Senator still has 2 minutes and 10 seconds.

Without objeotion, the Senator may proceed for 4 more minutes.

Mr. BIDEN. I thank the Chair.

Mr. President, Dean Calabresi, a man we all respect, the Dean of Yale Law School, from which Judge Thomas graduated, said, in what I believe to be the most compelling, convincing testimony given on his behalf: "I would expect that at least some of his views may change again."

He had made reference as to how he had changed his views, as I have ohanged my views since I came here as a young man at age 30 to the Senate floor, and I hope and pray that I will continue to grow and probably change my views if I am here another day, month, year, or 10 years.

Dean Calabresi goes on to say:

I would expeot that at least some of his views—

Referring to Thomas—

may change again. I would be less than candid—

He goes on to say—

if I did not tell you that I sincerely hope so. For I disagree with many, perhaps most of the public positions which Judge Thomas has taken in the past few years. But his story of struggle and his past openness to argument, together with his capacity to make up his own mind, make him a much more likely candidate for growth than others who have recently been appointed to the Supreme Court. * * *

Mr. President, like the dean of the Yale Law School, I believe that Judge Thomas has displayed a capacity for change and growth. It even sounds presumptious for me to say "capacity for growth" as if I have a right to say that. He has demonstrated capacity and, as times goes on, he gets stronger, he gets wiser, he gets better.

But no one can know in what direction that growth will go—not Dean Calabresi, not me, not even Judge Thomas himself.

And where Dean Calabresi and I part company is in the extent to which I am prepared to take a chance on Judge Thomas' growth being in the right direction, as opposed to the wrong direction. For me, because of where the Court currently stands, the cost of adding yet another rightwing member could be extremely high indeed. Rulings deemed unthinkable just a decade ago may be on the verge of becoming reality.

I wish Judge Thomas had put to rest my misgivings on that score, but, as I have already indicated, he has not.

And we are at a place in this country's history where the risks are simply too high.

So we have come to this difficult juncture, and all of us have come to it—the Senate, the President, the nominee—and I must tell you this confrontation was not inevitable. This vote of mine was not inevitable. It could have been avoided.

It seems to me, Mr. President—and I say respectfully to the President of the United States that he must shoulder a major share of the responsibility for bringing us to this place, because he has created a real dilemma for the Senate, which has occurred in other periods of our history as well, one in which we are forced to demand a very high degree of certainty about the President's nominee before we can give our consent.

That dilemma has been created by two facts:

A fervent minority within the President's party is engaging in an open campaign—as they say, open and notorious campaign—to shift the Court dramatically to the right. And the President has not been willing to engage in the kind of consultation with the Senate that would give us in this body more assurance that the nominees are not participants in that campaign. Therefore, we seek higher assurances than we ordinarily would.

We need to change the conditions that have brought us here, Mr. President, if we are going to avoid future confrontation.

I ask unanimous consent for 3 more minutes.

The PRESIDING OFFICER (Mr. AKAKA). Without objection, it is so ordered.

Mr. BIDEN. Mr. President, I respectfully urge the President of the United States to add the idea of "advice" into the process of seeking our "advice and consent" to the Supreme Court nominations instead of asking us to provide our consent to a nominee about whom we have significant misgivings, in an atmosphere where those surrounding the President have made it abundantly clear that he fundamentally wishes to shift the Court to a right direction, a far-right direction.

In the future, we need to pursue a course of moderation in judicial selections as we did in the Eisenhower and Kennedy and Ford and Nixon administrations; not on a course in which the Senate insists on someone of its own choosing—that is not our right—but on a course of genuine moderation, or genuine consultation and cooperation among the branches.

As Dean Calabresi put it in his testimony:

This is an extraordinary time in the history of the Court. It has been 24 years since a Democratic President has nominated a Justice to the Supreme Court. * * * At other [such] times * * * the President has attempted to name people to the Court whose views are very different from his own. * * * [But] this administration and the past administration have not done so.

Such a process could result in the selection and confirmation of the kind of Justices I spoke of earlier—Justices who, regardless of their stand on the contemporary, politioized issues facing the Court, are the kind of individuals who share a sound vision of the Constitution.

I hope the President will share in breaking this cycle of politicization and skepticism, because without him it will be impossible to make that break.

I hope that this is the last Supreme Court nomination I am forced to oppose during my tenure in the U.S. Senate, for it is truly with a heavy heart, Mr. President, that I oppose this nominee. Every instinct in me, every instinct in me, wanted to support Clarence Thomas for sound as well as unsound reasons. But every instinct did. And it is with real regret that I contemplate the possibility of more such conflicts in the years ahead.

But neither sorrow, Mr. President, nor regret, nor a desire to be able to support Clarence Thomas can permit me to vote for his confirmation when so much doubt exists in my mind.

If Judge Thomas is confirmed, Mr. President—and the odds heavily favor that outcome today—then I hope for the day when I could come to the Senate floor and announce that I should have voted with my heart and not with my head, that my hope should have been my guiding light. That is what I hope to be able to do when Clarence Thomas is confirmed, if he is.

Mr. President, I cannot do that today. I will not vote to confirm Clarence Thomas as an Associate Justice of the U.S. Supreme Court.

I thank the Chair.

Mr. DANFORTH addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, may I inquire, What is the parliamentary situation?

The PRESIDING OFFICER. We are now in a period of morning business.

Mr. DANFORTH. Mr. President, I ask unanimous consent to proceed for 10 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLARENCE THOMAS

Mr. DANFORTH. Mr. President, I first of all want to express to the chairman of the Judiciary Committee my appreciation for the truly admirable

way in which he has conducted himself for the last nearly 3 months in connection with the Thomas nomination. Clarence Thomas could not have asked for a fairer shake than he got from the chairman. At all times he was treated, and I was treated, with the utmost courtesy and total fairness.

I know the position that the chairman has taken has been a difficult one for him. He has stated to me throughout the past week or so, and as recently as yesterday afternoon, that this was going to be a very difficult and very close decision for him. And I am sure it was. And I am sure he is absolutely correct when he states his difficulty in reaching this decision.

I think I oould have provided him with a little help in his speech preparation that might have been positive, but he has reached his decision and I do not have any choice but to accept it. My hope is that this matter will be disposed of in the foreseeable future.

I hope that this would not be viewed, along with the speech of Senator HEFLIN yesterday, as the opening shot of a major interest group campaign that will have all the TV commercials and so on, and this will be dragged out over a period of weeks, past the recess.

I think most Senators have made up their minds. I am confident of the results on the floor of the Senate. The concern I have is that we would now have a rejuvenation of interest group campaigning for the Supreme Court and I ask the chairman how he would see the unwinding of this confirmation process?

Mr. BIDEN. Mr. President, I thank my colleague, Senator DANFORTH, for his kind remarks about the way in which I have at least attempted to conduct this process. Let me reiterate one thing. And then respond to two points that he raised.

One, Mr. President, this is not like the two other occasions in my 19 years in the Senate when I opposed a Supreme Court nomination. On those two occasions I had no doubt in my mind, not a single scintilla of doubt, that I was right in my "no" vote. This is a very close call. In my view someone holding my views could reasonably have reached the opposite decision.

One of my colleagues last night that I spoke with, who agonized over this and concluded to vote "yes," a Republican colleague, said ultimately he was voting Clarence Thomas' roots; betting on his roots. And I said I worry about his wings, not his roots.

It is a close call. The reason I bother to mention that in response to the two questions in the predicate in that I do not feel with the same degree of certainty that this man would take America in a direction different than I think it should go. So I say to the Senator from Missouri, this Senator has no intention, no desire, as I have stated to him throughout, to participate in any process—and I know of now—that will not give the Senate an opportunity to, in a timely fashion, make its judgment about this man; No. 1.

No. 2, I have not on a single occasion, I have not for over 4 years, spoken, confided in, been the confidant of, made any plans with, or even discussed this nomination in any way with any of the so-called interest groups left or right or center. And I think the Senator from Missouri knows the extent of my distaste for a notion of conducting this or any Supreme Court nomination and whether or not someone should sit on the Court based on 30-second commercials. So much so that I have said in the past and I will reiterate here, I condemn that process. I would be no part of that process.

But as the Senator from Missouri knows—we both know—neither of us control that process. The Senator from Missouri, one of the most decent men of this body, called me immediately upon learning—observing that I was the victim of one of those campaigns early on in the Thomas campaign, that I was the victim of a right-oriented group's ad campaign relating to Thomas.

But he also pointed out to me he could not control that any more than I could control any campaign that would be forthcoming.

Having said that, neither my staff, nor I, nor anyone that I know of who is informed, has any knowledge of any such campaign in the offing, I say ahead of time, if there is such a campaign in the offing, not only will those who put on the campaign have as their detractors those who support Thomas, they will have me as one of their detractors and I will make it clear to anyone willing to listen to me on the floor of the Senate or in this Nation that I think it is inappropriate. But I know of no such campaign.

The last point, in terms of the Senate's schedule. It is the intention of the Senator from Delaware to walk over here in the next 5 minutes, off this floor to the Senate Judiciary Committee, and oonduct a vote on Clarence Thomas. Now, based on announced votes, that vote will be 7 to 7.

Under precedents in that committee it would have been possible to kill the nomination. You need eight votes to get something out of a committee, as we all know—or you need a majority. Someone moves to favorably report a bill or a nomination and you must have a majority of the membere of that committee before it is physically sent to the floor of the U.S. Senate for ite consideration.

I have no intention, and I have so stated, of holding fast to that rule. I have made it clear that I believe the Senate should work its will. It is not the right nor the intention of the Constitution for a committee in Congress, a committee of 14 individuals, to be able to determine who should sit on the Court.

Onoe it gets to this floor, to the best of my knowledge we are going to operate under the normal procedures, which is 72 hours to write a report. Once it gets to the floor, within 2 days after it comes to the floor, it can be brought up. And to the best of my knowledge we will begin the debate at that time. I have no intention whatsoever and I know of no one at this point who has the intention of preventing the Senate from working its will on Clarence M. Thomas' nomination. That is as much as I can say to my friend.

Mr. DANFORTH. Mr. President, I appreciate the response of the chairman. My hope would be that the Senate could proceed in the middle of next week to take up the Thomas nomination so that the judge could take a seat, if he is confirmed, at the opening of the session of the Court a week from Monday.

My guess is that my time is running out. I ask unanimous consent to speak for an additional 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BIDEN. Will the Senator yield for 1 minute, because I must go to the committee?

Mr. DANFORTH. Yes. I would also like to say, Mr. President, before I yield to the Senator from Delaware, that I am not going to be able to attend my meeting this morning. I want him to know that it is not that I am boycotting the meeting of the Judiciary Committee but I have a plane to catch; that I just have to leave town. I am not waiting with bated breath for the results of that meeting, but I would otherwise be there.

Mr. BIDEN. Mr. President, let me say the members of my committee have assumed, after having seen the Senator from Missouri for so many hours over the last several months, that he is a member—a de facto member of our committee.

Mr. DANFORTH. Could I vote?

Mr. BIDEN. I assume he would like to vote to make it 8 to 7.

Mr. President, let me just say this. I have, as the Senator knows, kept both he and the White House fully and completely informed on every stage of this process. I commit to him on this floor that there will be no surprise at all. Anything the Senator from Delaware has any part of or is involved in at all, I will assure him that he will know ahead of time, be consulted and will be part of that process.

Mr. DANFORTH. I appreciate that, Mr. President and once again I say Chairman BIDEN, while his conclusions are wrong on this matter, his process has been very, very fair.

CLARENCE THOMAS—THE EMBODIMENT OF THE AMERICAN DREAM

Mr. DANFORTH. Mr. President, I must say that I am in quandry in deciding how to judge the judges with respect to Supreme Court nominations. I think that we are now in a lose-lose situation.

One one hand, it is clear that if a nominee has a track record, has written a lot, has taken positions on various matters, that nomination is going to be in extreme peril. The prior writings of the Supreme Court nominee are going to be reviewed in great detail. Every sentence is going to be examined. In this particular confirmation process, one of the Senators on the Judiciary Committee interrogated Judge Thomas about a footnote in a law review article.

So on one hand, we are told that if a nominee has a track record, if the nominee has taken positions on various matters that have been before the Court or before the country, that is a very risky situation for the nominee to be in. On the other hand, we are told that, I think these are the words of Chairman BIDEN, we demand a high degree of certainty about what the position of a nominee is and that we do not want to take risks in confirming somebody where we do not know what the past reoord of the person has been.

I am not quite sure which way we want it, Mr. President, whether we want nominees who have fully formed positions, full-fledged jurisprudenoe or, on the other hand, whether we want nominees who have emerged from the mountains of New England who nobody has ever heard of before.

It appears that either way the Senate is not going to be satisfied, or at least a number of Senators are not going to be satisfied.

I think that when we are dealing with a nominee for the Supreme Court, we must recognize the fact that there is no way to govern what that nominee is going to do if confirmed, and that always there is going to be a degree of trust about who this person is and how this person is going to funotion once sitting on this Supreme Court.

Particularly, this is the case of people who have not been on the bench for a long period of time and have not been law professors. Clarence Thomas does not have a personal background of being a law professor. He does not have a personal background of having been a Federal judge for about more than a year and a half. He comes from a wealth of background in all three branches of the Federal Government, and State government as well. But it has not been the kind of background that has led to a great study of many of the constitutional issues before the country.

So I think that it is not reasonable to expect that a person who is nominated for the Supreme Court at the age of 43, having spent the last 10 years or so of his life in the executive branch dealing with matters of employment and educational discrimination, I do not think that it is reasonable to expect that person has had a totally formed view of such matters as, for example, Roe versus Wade, or the establishment clause or the 14th amendment, or any of a variety of the other issues.

I think that there has to be a degree of confidence that we are voting for a character, we are voting for a person and not voting for the embodiment of a particular point of view.

To characterize Clarence Thomas as some rightwing person is totally erroneous. I can say to the Senate, if nobody in the Senate has noticed, let me just assure the Senate, I am not likely to hire a rightwing fanatic on my staff. I am just not likely to do it, and I hired Clarence Thomas twice: Once when I was State attorney general, and then after I had come to the Senate.

One of the interesting things about this whole process, Mr. President, is that the people who feel most intensely against the Thomas nomination are people who do not know him. And the people who feel most strongly in favor of his nomination are people who have known him for a very long period of time.

People have come forward who knew him when he was in Jefferson City: supreme court judges in Jefferson City, MO, before whom he had argued; members of the staff of the attorney general's office who served with Clarence Thomas 15 years ago or so have come forward; people who knew him 10, 12 years ago when he worked in my office in the Senate; a State Senator from Georgia who grew up with Clarence Thomas and was an altar boy with Clarence Thomas, and this happens to be a Democratic State Senator from Georgia; the people who taught him, the nuns who taught him in school; the dean of Yale Law School; the president of Holy Cross College—all of these people who have known Clarence Thomas over a long period of years, those are the people who have come forward, those are the people who have testified about the man Clarence Thomas; the person Clarence Thomas; the strength of character, the amazing self-discipline that he has; the strong sense of independence.

One of my colleagues said, is this going to be somebody who is going to be under the thumb of Justice Scalia? He is not going to be under the thumb of anybody. He never has his whole life. His entire life has been the struggle against being under peoples' thumbs and his total commitment to disadvantaged people, the disadvantaged groups. We might disagree about the exact policy of serving minorities in America, but Clarence Thomas' whole commitment of his private life, as well as his public life, has been to try to improve the lot of those who have been left out in this country.

All of those personal qualities, all of that personal commitment is what makes up this individual who has been nominated for the Supreme Court. And these qualities are recognized by the people who have known him the longest and who know him the best.

Clarence Thomas really is the embodiment of the American dream. He really is the embodiment of the values of the American people, of their commitment to equal justice and to hard work and to dedication and to making the most out of your life. That is what Clarenoe Thomas is all about. That is what is recognized by people who have known him so long and so well.

Mr. President, it really is a catch-22 to say to a Supreme Court nominee, we are not going to vote for you because we do not know preoisely how you are going to decide cases, or precisely what your judicial philosophy is, and then if you state your judicial philosophy and state how you will decide cases, then we are not going to vote for you anyhow. That is a catch-22. I submit that it is just not fair for the Senate to use that kind of standard in judging a Supreme Court nominee.

I think we are judging the whole person, and Clarence Thomas, as a whole person, is known by many people in this country who have come forward to support his nomination. I am proud to be one of those people, Mr. President, and I look forward to his confirmation next week.

Ms. MIKULSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I ask unanimous consent to speak as in morning business—understanding that there was an order proposed—while we are waiting for those two Senators to come for the regular order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Maryland is recognized.

Ms. MIKULSKI. I thank the Chair.

(The remarks of Ms. MIKULSKI pertaining to the introduction of S. 1768 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

The PRESIDING OFFICER. Who seeks recognition?

The Chair, in his capacity as an individual Senator from Virginia, notes the absence of a quorum.

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. WIRTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Anderson and Thomas Sutherland—has offered the first public reflections on his captivity. Mr. President, I ask unanimous consent that the Associated Press report of his remarks be printed in the RECORD at this time.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

[From the Associated Press, Sept. 27, 1991]

MCCARTHY SALUTES STRENGTH OF HOSTAGES

LONDON.—John McCarthy says the strength of his fellow hostages helped him through more than five years of captivity in Lebanon and supports him still.

"These are all men of real merit," McCarthy said of the hostages he was held with: Brian Keenan, Terry Anderson, Thomas Sutherland, and Terry Waite.

"I realize how lucky and privileged I was to share their ordeal. Their strength continues to support me now."

McCarthy, who was released on Aug. 8, made his first lengthy public comments this week about his 5-year ordeal.

In a series of interviews with newspapers and Britain's two television networks, McCarthy, 34, was joined by Jill Morrell, 33, who led a campaign to keep his case in the public eye. Both turned aside questions about whether they intended to marry.

McCarthy said he was imprisoned longest with Brian Keenan, the native of Belfast, Northern Ireland, who was released in 1990. "He was the rock on which I built my survival and I always missed his dear presence," McCarthy said.

McCarthy and Keenan later were held with Anderson and Sutherland. The two Americans had a radio and gave McCarthy the news that his mother had died.

"As I got to know Anderson and Sutherland again I realized that I had found two new right arms. They gave me a new and very great support," McCarthy said.

Anderson, the chief Middle East correspondent for The Associated Press, is the longest-held hostage. He was kidnapped March 16, 1985.

Waite, a Church of England envoy, was the last to join the group, just before Christmas last year, McCarthy said.

"Terry had been kept alone for almost four years, yet within a few hours he was chatting away as if that huge chasm had never existed," said McCarthy.

After a serious attack of asthma, Waite had "returned to form and kept us entertained with tales of his life and experiences around the world."

"Days and weeks would pass without note. But I did find that if I slept during an afternoon I would often awake, terrified of the time years and months that I had lost, in which nothing had been achieved," he said.

"A hostage dosn't relax. Apart from the obvious questions forever on one's mind * * * there ars more immediate tensions.

"I was always apprehensive about moving to a new location as the moves were traumatic. I slept badly. At whatever time the lights went out, it always took me two or three hours to relax and restore a sense of proportion and hope before I could go to sleep."

He said he felt no bitterness toward his captors.

"A long time ago one came to terms with the fact that the people who were holding us were doing what they thought was the right thing what they believed in," he said.

The hostages filled the time with cards, invented games and endless conversations, he said.

"We used to make plans, just enormous and wild plans particularly Brian Keenan would come up with enormous schemes that he would insist that we discuss for days on end," such as Keenan's scheme for starting a yak farm in Patagonia.

"We know nothing about yaks nor Patagonia, but this didn't really seem to matter at the time. You know, we make it up as we go along, and discuss possible problems, and figure them out when we get to Patagonia," McCarthy said.

"The days of despair were fairly short-lived. I might go up and down a few times in a day, but it didn't stretch over many hours or something like days, so that one might be up a little and then down a little, but it kind of evened out. We all watched each other, obviously, to how it was going, to try to jolly someone along."

McCarthy said he kept a newspaper picture of Ms. Morrell in his cell.

"You can see we are here together today and we're taking it very slowly and I think that's the only way to do it. We're just two normal people getting to know each other again. It's going very nicely," McCarthy said.

Earlier this week, Britton Jack Mann, 77, was released. He was kidnapped in Beirut in 1989.

At least nine Westerners are still missing in Lebanon five Americans, a Briton, two Germans and an Italian. In addition, British officials says Alec Collett is presumed dead following claims he was killed in 1986 in retaliation for British complicity in U.S. bombing raids on Libya.

JUDGE CLARENCE THOMAS NOMINATION

Mr. DECONCINI. Mr. President, I rise to share with my colleagues the statement I made before the Senate Judiciary Committee today regarding my reasons for supporting the nomination of Judge Clarence Thomas to be an Associate Justice of the United States Supreme Court. The following is the text of my remarks:

I would like to first commend the chairman for his stewardship in these hearings. Once again, he has conducted the hearings in a fair manner with respect to both parties, the nominee and the witnesses.

The hearings are an exhausting process, but essential. During the hearings we have heard detractors of the process harken back for the days when nominees were not questioned by the Senate. I disagree with that notion. Five days of insight into a nominee is a small price to pay for someone who will spend the next 40 years interpreting the Constitution. The Senate and the American public have a right to know a nominee's judicial philosophy, and quite frankly, many of my concerns regarding Judge Thomas were only alleviated through his hearing testimony and his answere to our questions.

Many of my colleagues believe that Judge Thomas was less than candid to several direct questions. I do not quarrel with their right to ask those questions, and I recognize their frustration with the process, but I found Judge Thomas forthcoming on several issues. And I believe that his testimony revealed his judicial philosophy.

No doubt, there are improvements to be made in the process. But we must remember that we have made considerable advancements from prior nomination hearings. It was not too long ago when Senator SPECTER and I were in the process of drafting a resolution concerning the issue of nonresponsive judicial nominees before this committee.

As we all know, voting upon a nominee to the Supreme Court entails a difficult, personal decision. For this particular nomination, I must admit, I struggled in making my decision.

I began my consideration of Judge Thomas' nomination with the presumption that the President's nominee to office should be confirmed. During the August recess, I read extensively from Judge Thomas' writings, speeches, and judicial decisions. I reviewed his record at the Equal Employment Opportunity Commission [EEOC] and at the Department of Education. I read analyses of his record prepared by opponents and proponents. I talked to my constituents in Arizona.

And after this preparation, I was left with a number of concerns about Judge Thomas. I knew these concerns could only be resolved through the hearings. After 5 days of testimony by Judge Thomas and hearing from over 90 witnesses, I came to the conclusion that I could support Judge Thomas.

Over the past few weeks, we have heard from various reputable groups and individuals who oppose the nomination of Judge Thomas, including national groups representing the interests of women, African-Americans, Hispanics, and the elderly. I do believe that the opponents of Judge Thomas had a right to be concerned about his nomination. Over the years Judge Thomas has written articles and delivered numerous speeches criticizing landmark decisions of the court, rebuking Congress, and ridiculing the civil rights community.

His positions on natural law and the right to privacy as well as his praise of the views of Thomas Sowell raised serious questions in this Senator's mind.

I have not discounted the controversy of Judge Thomas' tenure at EEOC. He and I have had our differences regarding EEOC's treatment of the claims of Hispanics and the elderly during his tenure. I made this clear to him both at his court of appeals hearing and these hearings. I was not happy with the results at EEOC during his tenure. But I do believe that Judge Thomas acted within his official capacity and was earnest in his efforts.

In making my decision to support Judge Thomas, I balanced several important factore against Judge Thomas' prior record, statements, and writings. Judge Thomas has shown a capacity for growth, an understanding of the role of the judiciary, and an ability to divorce his prior duties with that role. I also believe that his controversial writings and his tenure at EEOC must be weighed against his commendable work on the court of appeals. Most importantly, Judge Thomas has shown that he will be a jurist who will not impose his agenda on the court.

More so than even Justice Souter, Judge Thomas supported heightened scrutiny for discrimination against women. I was very encouraged to hear him say that he believed that the court should be willing to apply even greater scrutiny to gender discrimination.

Unlike Judge Bork, he assured the committee that he did recognize an unenumerated right to privacy in the Constitution; some of my colleagues would have like to have heard a more direct application of this right. Considerable emphasis has been placed upon Judge Thomas' position regarding abortion. Members of this committee

have strong views on this issue. I, too, have strong views on this issue. The right of a woman to choose an abortion is one of the most passionate and divisive issues facing our Nation, today. However, whoever ascends to the court will also confront the fundamental issues of tomorrow. Therefore, my vote on a judicial nominee will never turn on one issue.

Drawing from a remarkable life story, Judge Thomas will bring a perspective to the court that it is surely lacking. His story is one of courage—a story of an individual who has risen from the indignity and pain of segregation and poverty to be considered for the higbest court in the land. If confirmed, I hope that Judge Thomas will continue to recall his humble background and draw upon it.

But Judge Thomas' personal success story does not alone qualify him for the Supreme Court. Instead, I believe that he has the strength of character, diverse experience, intellectual ability, integrity, and judicial temperament to succeed on the court. I believe that he is an independent thinker beholding to no particular cause.

Judge Thomas would not have been my choice to be on the Supreme Court. I do not agree with President Bush that he is the most qualified candidate for the position. But the Senate should not superimpose its choice in the role of advice and consent.

If confirmed, Judge Thomas will be making some of the most important decisions for this country for decades into the future. I will not agree with all of his conclusions. But it is my belief that, in reaching those conclusions, Judge Thomas will exercise judicial restraint. By voting in favor of a nominee to the Supreme Court, we express our trust that the nominee will exercise the immense powers of that position, judiciously. I believe that Clarence Thomas will not compromise that trust.

HEALTH CARE

Mr. KERREY. Mr. President, yesterday my colleague from the State of Arizona spoke on the issue of health care. In his statement he called for a "dialog with the American people" over the serious problems facing our Nation's health care system in order to avoid an experience similar to the Medicare Catastrophic Coverage Act experience. My response to my colleague is "where has he been?"

There is a very lively dialog on our Nation's health care system going on across the country as we speak. Americans are disoussing health care in town hall meetings, in coffee shops, at the bargaining table, in medical association publications, at agricultural meetings, just about everywhere you go. I have heard the discussion repeatedly in Nebraska over the past several years.

Health care is becoming a regular topic in the media. The Center for Media and Public Affairs reports that the number of nightly news stories on health care on the three major networks has nearly doubled in the last year. The polls document the extent of this dialog. The Harris polls have indicated that 89 percent of Americans think fundamental change or complete restructuring of our health care system is necessary. Recent Los Angeles Times and Gallup polls show that over 72 percent of Americans want some form of national health insurance.

Yesterday's New York Times described the source of some this concern as it outlined some health care problems plaguing a growing number of Americans. According to polls, 62 percent of Americans are not satisfied with the costs of health care and the vast majority of American households have experienced the impact of rising costs directly through job lock—an increasingly common phrase used to describe persons who are locked into a job because of health insurance coverage—reductions in benefits or increases in out-of-pocket costs. The impact this has on workers, and subsequently, our Nation's productivity, is extremely disturbing as they see wage and salary increases eaten up by health or stay in jobs instead of seeking out better jobs or more training, on workers is extremely disturbing.

Mr. President, I ask unanimous consent that the text of the New York Times article be printed in the RECORD following my comments.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibition 1.)

Mr. KERREY. I don't know where the Senator from Arizona has been, but Americans are engaged in a dialog on health care that will only grow more intense as problems with our current system worsen. It will intensify as Americans increasingly realize that they ultimately bear the costs of our health care system. It will intensify as more American families experience first hand how health care crowds out wage and salary increases, impairs their standard of living, and puts the fear of financial ruin resulting from a serious illness into their hearts. It will intensify as more American businesses see their health care spending as a ratio of after-tax profits rising above the 100-percent mark. It will intensify as Americans realize that over one-third of every dollar of growth in our economy goes to health care and what this means for spending on other important social programs, education and other important needs.

The current debate is not "son-of-catastrophic," as implied by my colleague, although the impact of rapidly rising health care costs is catastrophic to many sectors of our society.

The Senator commented on several aspects of the Health USA proposal I have introduced in the Senate. He states that a national system would make health care more political, bureaucratic, wasteful, and unrelated to need. I would ask the Senator how he would characterize our current health care system? I, along with many others, would define it as fragmented. It is increasingly unable to provide what Americans want and increasingly unable to meet the needs of a growing number of Americans.

Health USA would crate a true health care system—integrated, logical and available to all Americans. HUSA does not hand the health care system over the Federal Government. Health USA proposes that the Federal Government do what it does best—collecting funds—and what it must do to create an equitable system across States—establish Federal guidelines for benefits and programs. It leaves the delivery of health care where it belongs—in the private sector and encourages competition among private and public health plans.

Health USA simplifies our current health care system. It establishes a comprehensive benefit package and eliminates the connection between employment and health care simplifying the system for individuals, providers, and employers.

Health USA controls health care costs directly, which means that, in doing so, Americans will pay less for health care an get more. Health USA creates a budgeted system that provides financial incentives to health plans, doctors, hospitals, and individuals to control costs, and it places them at financial risk for ensuring that care is provided appropriately and efficiently. By doing so, Health USA changes the rules of the health care marketplace to promote and encourage effioiency and effectiveness—as opposed to our current financing system which has built-in incentives to provide more and more care and shift costs and risks among different payers.

By changing the incentives in the system, Health USA will cover all Americans for a comprehensive package of benefits, provide the elderly and disabled with much needed long-term care services—all for $11 billion less than we are currently spending on health care. Over 5 years, Health USA will save the United States over $150 billion in health care spending.

My colleague states that Health USA will "enshrine the status quo" and discourage innovation. On the contrary, Health USA would infuse the American health care system with strong motives to develop and improve organized delivery systems. Systems that would be very beneficial to the health care of Americans.

Senator MCCAIN does spell out several options for reform that might address certain aspects of the problems in our health care system in the short term. There might be some merit in some of these of incremental reforms. These proposals, like Health USA, need to be put out to the public for debate and discussion. In any case, I do not know which crystal ball my colleague from Arizona is gazing into, but it is definitely not the one that most are looking into at the moment on our health care system. Americans are

One who answered "yes" to that question was Larry Wayne Proctor Jr., 24, of Abbeville, S.C. His experience also typifies the spreading problem of "job lock."

"I stayed in a job I really didn't like because of health insurance," Mr. Proctor said. Now a video store manager, he had worked in a textile mill until December 1989. In 1988 he seriously damaged his knee and needed surgery, which was covered by his policy at the mill. His doctors said he would need more surgery but that he should quit working at the mill where strenuous labor impaired recovery.

Mr. Proctor says he was reluctant to quit his mill job because any new health policy would exclude coverage of his knee as a "pre-existing condition." After months of worry he left anyway. Now, his leg in a brace, he is putting off the followup surgery as long as possible," "toughing it out," as he put it.

Job lock

	Percent
"Have you or anyone else in your household ever decided to stay in a job you wanted to leave mainly because you didn't want to lose health coverage?"	
Adults who said yes, by household income:	
Under $15,000	22
$15,000 to $29,999	36
$30,000 to $50,000	34
Over $50,000	18

Based on a New York Times/CBS News Poll Aug. 18 to 22 with 1,430 adults nationwide.

Evaluating care: 2 aspects

	Percent
Most Americans are satisfied with the quality of health care available to them:	
Satisfied	78
Not satisfied	20
Don't know	3
Many are not satisfied with the cost:	
Satisfied	34
Not satisfied	62
Don't know	4

REDUCING COSTS

[In percent]

	Willing to	Not willing to
To reduce costs, would you pay a higher health insurance deductible?		
1991	52	37
1982	45	44
Give up the right to sue for possible malpractice?		
1991	39	48
1982	33	54
Go to a clinic to see an available doctor instead of going to see your own private doctor?		
1991	36	54
1982	50	42
Have expensive treatments like organ transplants not be covered by health insurance?		
1991	25	62

FEELING THE EFFECTS OF CLIMBING COSTS

[In percent]

Percent of total	Total 1990 household income			
	Less than $15,000	$15,000 to $29,999	$30,000 to $50,000	Over $50,000
20 percent household has been seriously hurt by medical bills	31	24	17	9
26 percent household member took one job rather than another mainly for health benefits	22	30	31	15

FEELING THE EFFECTS OF CLIMBING COSTS—Continued

[In percent]

Percent of total	Total 1990 household income			
	Less than $15,000	$15,000 to $29,999	$30,000 to $50,000	Over $50,000
48 percent working household says employer has cut health benefits or required employee to contribute more	33	45	52	53
All income groups agree: 79 percent health care system is headed toward a crisis because of rising costs	83	77	83	77

Based on telephone interviews conducted nationwide with 1,430 adults Aug. 18–22 and on a 1982 New York Times Poll.

HOUSE VOTE SHOWS CLEAR SUPPORT FOR DRUG AND ALCOHOL TESTING

Mr. DANFORTH. Mr. President, on 12 occasions the Senate has approved drug and alcohol testing legislation for airline pilots, railroad engineers, commercial truck and bus drivers, subway operators, and others who are responsible for the safety of the traveling public.

The Senate has passed this legislation three times this year—once as part of the highway reauthorization bill, once as part of the Transportation appropriations bill, and once as a free-standing measure.

A few individuals in the House are obstructing this important legislation. These few individuals do not represent the overwhelming view of the House.

This first was made clear in 1988, when the House voted in favor of a motion to instruct conferees to agree to Senate drug and alcohol testing provisions by a margin of 377 to 27.

This week, the House of Representatives again showed that it overwhelmingly supports mandatory drug and alcohol testing for safety-sensitive transportation workers. With a resounding vote of 413 to 5, the House instructed its conferees to agree to the Senate drug and alcohol testing provisions in the fiscal year 1992 Transportation appropriations bill.

The Senate wants a drug- and alcohol-free public transportation system. So does the House. So do the American people.

It is time drug and alcohol testing became law. We do not need more subway wrecks like the one in New York City in which five died. We do not need another rail tragedy like the one at Chase, MD, in which 16 died.

I look forward to the enactment of this life-saving legislation.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Chair would note that under the previous order the period for transportation of morning business is closed at this time.

ORDER OF PROCEDURE

Mr. WIRTH. Mr. President, I ask unanimous consent to address the Senate for 10 minutes as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF CLARENCE THOMAS

Mr. WIRTH. Mr. President, thank you.

Mr. President, casting a vote for a Supreme Court nominee is clearly one of the most important responsibilities each of us has. The ramifications to our society are great because placing someone on the Court potentially places them there for life. In the case of Clarence Thomas, this could mean easily 40 or more years; his impact on the Court would be felt for the rest of my life, well into my children's lifetime, and significantly into the lives of even the next generation.

This is as important a vote as I am likely to cast as a Member of this body.

Mr. President, I met with Mr. Thomas nearly 2 months ago. We had a very long and I thought extremely interesting discussion. Our distinguished senior Senator from Missouri, joined us for that event. In the discussion, Mr. President, I found Clarence Thomas to personally be a very engaging individual. I found his story, which has been repeated so often, enormously compelling—the story of an individual growing up in that extraordinary background of poverty and problems, rising to the point where he is now a nominee for the highest Court in the land.

His is a thoroughly American and thoroughly wonderful story, one in which we all believe, and it is very warming to me to know that kind of a history can be repeated in the United States of the 1990's.

However, we are not voting on that particular history. We are voting on the legal capability of this individual. The Senate's advice-and-consent function is one of the most important underpinnings in our Constitution's balance of power. I take that role very seriously.

We must not only make an independent evaluation of whether the nominee is qualified as the best person for the job, or certainly among the best people for the job; we must also determine that nominee's likely impact on our constitutional liberties.

This consideration is particularly important when examining our past legislative activities. For the last several years we have seen an erosion of those liberties. Congress has been forced to pursue an agenda of restoration, restoring those rights lost to Supreme

Court decisions that have reversed long-established precedent.

Since my conversation with Mr. Thomas, I spent a great deal of time reading what he has written, and what has been written about him. I have had many conversations with diverse spectrum of people many who have known him about Clarence Thomas and what kind of a Justice he might become personally. I watched the hearings with great interest and I have analyzed all the information available to me.

Unfortunately, I think we are now faced with a nominee sent to us by a President whose White House appears more interested in appointing judges, at all levels, skeptical of the individual liberties that I believe are enormously important. Polarization in the judiciary is being watched by us all.

Today, a judge's ideology is more critical than his or her judicial temperament, apparently, and judicial independence is being lost by Presidents seeking to make the highest Court in our land a precise and narrow extension of their own political views. The concern about legal capability is evaporating.

I was very concerned in my discussion with Clarence Thomas three variables. I will outline those very quickly. The first was the issue of affirmative action. Obviously, Clarence Thomas, as he pointed out himself, succeeded because of support mechanisms of his own grandfather and the school he went to in the neighborhood.

What happens if those mechanisms are not available? What is the role of the Government, what is the role of the rest of society for people who do not have the support mechanisms that he has had? The ones, as he so eloquently pointed out to me in our discussion, which keep an individual from the kind of failure that can occur? What happens?

I also discussed the issue of natural law, an issue which has a very elegant and quite remarkable intellectual history in our society, in our politics, the Declaration of Independence, of course, being perhaps the most beautiful statement of a natural law: "We hold these truths to be self-evident, that all men are created equal * * *" It reaches back in a long, intellectual history of Western civilization.

Unfortunately, having earlier stated his support for natural law, Mr. Thomas was not prepared to discuss that. He was not even prepared to grope with that set of questions, I did not think, in our discussion, nor has he done that in the discussions with the Judiciary Committee.

Finally, the issue we discussed was the issue of choice, of privacy, an issue which has come right to the top of the agenda in our society, and which I felt Mr. Thomas at least ought to frame the question, if not answer the Roe versus Wade issue directly. His response to me was that he had not really thought about the issue.

I did not find that at all credible, Mr. President. You cannot be an adult individual in the 1980's in Washington, DC, and you cannot be in high political office, as he has been, or engaged with an administration where this issue is such a separating issue, without addressing the abortion issue. That simply is not possible.

I also watched and listened to the hearings, and looked very carefully at a number of the precedents that he discussed, or refused to discuss. I also found myself very concerned with his own refusal at the Office of Civil Rights to comply with a court order.

Mr. President, overall, I find myself coming to the conclusion of opposing on the nomination of Clarence Thomas. I am sorry to do so, as I found him, as an individual, a very engaging person with a history that is wonderfully American in every way.

I think we have to continue to look for absolutely the best people with the clearest views of these important issues, so when this nomination comes to the floor, I will vote "no."

Mr. President, casting a vote for a Supreme Court nominee is one of the most important responsibilities of a Senator. The ramifications to our society are great, as placing someone on the Court places them there for life. In the case of Clarence Thomas, that could easily mean 40 or more years; his impact on the new Court would be felt for the rest of my life, well into my children's lifetime and significantly into the life of the even next generation. This is as important a vote as I am likely to cast as a Member of this body.

The Senate's advice and consent function is one of the most important underpinnings in our Constitution's balance of power and I take my role very seriously. We must not only make an independent evaluation of whether a nominee is qualified to sit on the Court, we must also determine that nominee's likely impact on our consitutional liberties.

This consideration is particularly important when examining our past legislative activity. For the last several years as we have seen an erosion of those liberties, Congress has been forced to pursue an agenda of restoration—restoring those rights lost to Supreme Court decisions that have reversed long-established precedents.

I have had the opportunity to learn a great deal about Judge Thomas. Two months ago, we met at length and discussed his ideas about the direction this country is headed. We talked about how to help a generation that does not have a concept of "deferred gratification" and what we must do so that they might have a stake in our society. We discussed the role that individual rights play in developing that sense of societal commitment and what removing those rights might mean to those who are disenfranchised. We disoussed natural law, affirmative action, and privacy.

It was an interesting conversation—one where I became privy to his personal viewpoints and one which I will never forget.

During the past few weeks, I spent considerable time reading what he has written and what has been written about him. I have had many conversations with diverse spectrum of people—some of whom have known Clarence Thomas personally—about what kind of Justice he might become. I watched the hearings with great interest. I have analyzed all the information available to me.

His is the great American success story, and he tells it in an engaging and moving fashion. By all accounts he is a person of integrity, courage, and personal appeal. One cannot help but admire his personal struggle out of poverty and his rise in politics and the law. We all want to believe that his is a story that can be retold time and time again, featuring tens of thousands of other citizens.

But, Mr. President, we are now faced with a nominee sent to us by a President whose White House is more interested in appointing judges at all levels skeptical of individual liberties than in preserving personal freedom. We are witnessing an increased politicization of the judiciary. Today a judge's ideology has becoome more critical than his or her judicial temperament or sheer legal competence. Judicial independence is being lost as the last two administrations have sought to make the highest court in our land a precise and narrow extension of their own political views.

I am oonvinced that the framers of the Constitution had this danger in mind when they included the Senate as a partner with the executive branch in confirming Supreme Court appointments. And that is why each Senator must carefully examine Clarence Thomas: His record, his qualifioations, and his likely impact on the lives of our citizens—those alive today and those yet to be born.

After carefully reviewing these matters, I have oome to the conclusion that I must oppose Clarence Thomas' nomination to the Supreme Court.

Clarence Thomas has a record. We have seen it. He has written articles on various subjects. We have reviewed his job performance in situations where he was to ensure that educational institutions and employers did not discriminate. As an appellate court judge he has written decisions and during the oonfirmation hearings he voiced his opinion on several cases heard in the past by the Supreme Court.

We have seen his record, and it troubles me deeply.

As Assistant Secretary for the Office for Civil Rights in the Department of Education, his responsibility was to carry out the laws that prohibit federally supported educational institutions from practicing discrimination. Yet, when handed a court order forcing him to comply with requirements for processing civil rights cases, he blatently disregarded it. He testified under oath that he was violating an order of the court. This flagrant renouncement of the judiciary confounds me: Is that the commitment to the rule of the law a Supreme Court justice should have?

As Chair of the Equal Employment Opportunity Commission, Clarence Thomas backpedaled and contradicted himself on what the Commission's role should be in enforcing Federal laws forbidding employment discrimination. By rejecting court-approved methods of determining discrimination and remedies for workplace discrimination, he ignored the laws he was sworn to uphold.

Clarence Thomas falled to investigate age discrimination charges within the 2-year statute of limitations under the Age Discrimination Enforcement Aot. His inaotion left literally hundreds of workers with no recourse in the Federal courts and worse off than when their complaints were filed.

Additionally, Clarence Thomas dropped the ball in regard to enforcing the law dealing with employers' obligations to make pension contributions. In his absence of action, Congress was forced to intervene on behalf of our older Americans. When Thomas was implementing these new directives, he still sought to shortchange those affected. He drastically cut back enforcement of the Equal Pay Act, which prohibits gender-based differentials in jobs that are equal or substantially equal. Is this the kind of justice we are seeking in this country?

In his reading of the Stotts decision, he was almost defiant in his refusal to enforce antidiscrimination laws, and he falled to seek goals and timetables in conciliation efforts and court-approved settlements. More importantly, he allowed his personal policy preferences to take precedenoe over established law.

I am also deeply troubled by his lack of clarity on the issue of affirmative aotion programs—programs that try to redress the Nation's long history of raoial neglect and oppression. There is no small degree of irony in this. I am almost certain that were it not for affirmative action programs, this Senate would not be oonsidering the nomination of a fatherless child born into poverty from Pinpoint, GA.

The issue that troubles me most, however—and the primary reason I cannot vote to confirm Clarence Thomas—is his ambiguous stand on the fundamental right to privacy and reproductive freedom. During the hearings, Clarence Thomas was anything but forthcoming in his views about this basic right in our country. It seems incredible that in this decade, after more than a century of progress in defining and protecting individual rights, the Supreme Court may very well turn back the clock by interpreting the Bill of Rights to exclude something so fundamental as a right of privacy. But this is precisely what we are facing, and precisely why it is so important to know how Clarence Thomas interprets this right.

During his hearings, Clarence Thomas responded to a number of questions on several areas of the law that are pending before the Supreme Court. He would not make clear, however, his views on the legal foundation for the fundamental right for a woman to make her own choices about her health care.

I am profoundly disturbed by Clarence Thomas' endorsement of a constitutional protection for the natural right to life—supporting the argument that the fetus has a natural right to life from the moment of conception. Under this interpretation of the Constitution—which would lead to the overruling of Roe—States and Congress would be barred from keeping abortion legal. This is unacceptable, and Clarence Thomas did little to withdraw himself from this position—rather he chose to simply state that he had not reread the statements he had previously made and could not discuss them.

Testimony made it clear to me that Judge Thomas does not believe the ninth amendment protects individuals for unenumerated rights—including the right to privacy. In fact, he indicated a certain amount of hostility toward the ninth amendment and its protection of individual liberties by describing that right as an invention. The ninth amendment is an invention of our forebearers that warrants celebration—not contempt—because it supports the premise that citizens of this country should have the right to privacy.

Legislatures are democratically elected bodies; by nature and composition the legislative branch necessarily refleots the views of the majority. This branch of Government is often unsuited to the task of protecting the rights of unpopular minorities, including those who are most vulnerable in our society. That is why every individual American has, under our Constitution, the right to look to the Bill of Rights and the Supreme Court for ultimate protection against the intrusions of government—and that is why the debate about the right of privacy and the nomination of Clarence Thomas is so important to every American.

Finally, I think it is important for the Supreme Court—which is, after all, the third coequal branch of Government—to reflect the historically diverse nature of our society. The Supreme Court's deliberations on the great issues of the day should not be dominated by one narrow point of view. This is not to say that the Supreme Court should never speak unanimously. Rather, it is to point out that on such a broad question of protecting individual rights and the right of privacy, it is disturbing to think that the highest court in the land could be so completely imbalanced and out of step with the views of the society it is charged with protecting.

It is not Clarence Thomas the man, who concerns me—it is Clarence Thomas the Supreme Court Justice. His constitutional and judioial views—not his personality—are what interest me. By refusing to address many of the issues of concern to me and other Members of the Senate, his previous statements and writings must be the record we consider today.

I find it suspioious that Clarence Thomas would be willing to answer many questions about pending cases and issues likely to come before the Court, yet he cannot or will not answer critical questions about his views on the fundamental right of privacy. Even more disturbing is that he did not feel the need to review—after weeks of preparation and days of testimony—articles and reports he had written.

Instead, he put artificial distance between his work on the EEOC and his responses to questions by the Judiciary Committee. Therefore, we are left in the dark as to his judicial philosophy.

In her testimony before the Judiciary Committee, former Gov. Madeleine Kunin of Vermont noted—and I think accurately—that Clarence Thomas would like us to believe that silence equals impartiality—that he is a blank slate and only the facts of the case will determine how he will rule. Even though he was willing in the past to disregard decisions made by the courts based on his own preferences, he would climb up to the most important judicial bench in our country and not bring to it any of the disregard for established law that we have witnessed. Mr. President, I find that impossible to believe.

His record is an indication of the direction Clarence Thomas would like to take the Court. More than 20 years ago, Senator THURMOND raised the red flag on how dangerous that can be to our country by saying:

> It is my contention that the Supreme Court has assumed such a powerful role as a policymaker that the Senate must necessarily be concerned with the views of prospective Justices or Chief Justices as it relates to broad issues confronting the American people and the role of the Court in dealing with these issues.

Mr. President, if I had bsen in the Senate at another time in this Nation's history, I might have been called upon to vote to confirm the nomination of a Justice who would have upheld the

constitutionality of slavery as in Dred Scott, or the legality of segregation as in Plessy versus Ferguson. I would hope that given that opportunity, my judgment would have turned on a commitment to civil liberties and fundamental constitutional rights. And just as freedom from slavery and equality in public education and accommodations were hotly debated topices in days past, the constitutional debate today is focused on basic principles such as privacy.

Decisions to be made on the Supreme Court are too important to be left to vague platitudes and philosophical uncertainty. This body should not leave its preference for judicial equanimity, rather than partisan ideology, to chance. Regretfully, I cannot support Clarence Thomas' nomination.

The PRESIDING OFFICER. Who seeks recognition?

Mr. BENTSEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. COCHRAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair reminds the Senator that the period for morning business was scheduled to expire at this time.

EXTENSION OF MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the time for morning business be extended, and that I may be permitted to speak for 2 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

SUPPORT FOR THE NOMINATION OF CLARENCE THOMAS

Mr. COCHRAN. Mr. President, it is clear to me that Judge Clarence Thomas is qualified and entitled to be confirmed as an Associate Justice of the U.S. Supreme Court.

It is also clear that Judge Thomas is unique—unique in the experienoes he will bring to the Court, unique in his heritage, and also unique in his sense of fairness, openmindness, honesty, and integrity.

He will be, I predict, an independent voice for reason and for justice for all as a member of the Supreme Court.

I am impressed with his obvious competence and his determination to do what he feels is right, whether it is popular or not. His critics would say that doing what is right is voting the way they want him to vote on cases that will come before the Supreme Court.

Clarence Thomas should be his own man, and he has proven that he is. He has also demonstrated his judicial competence as a member of the U.S. Court of Appeals for the District of Columbia. I am confident that he will be a very competent Justice of the U.S. Supreme Court.

During the hearings before the Judiciary Committee, Judge Thomas has had the opportunity to tell us about himself, his background, his respect for the rule of law and the Constitution of the United States.

On the basis of his personal qualities and his experience, I will vote for his confirmation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. SYMMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Chair reminds the Senator, under the previous order the transaction for morning business was scheduled to conclude at 10:15.

Mr. SYMMS. I ask unanimous consent that I be permitted to proceed for 15 minutes as in morning business to speak on the Thomas nomination.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF CLARENCE THOMAS

Mr. SYMMS. I thank the Chair.

Mr. President, I rise this morning to support the nomination of Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

As I have on the other nominations that have come before this Senate, I think the most fundamental, important reason to vote yes or no on the confirmation of a judge, No. 1, is whether or not the defendants who would go before that court will receive a very fair hearing from the justice and those judges who are on that court. That is the fundamental question that people should ask.

I think it is a given that one of the reasons the American people voted for President Bush is because they wanted him to name people to the Supreme Court who were consistent with his own judicial philosophy.

The fundamental reason I decided to support Clarence Thomas is I know him to be a fair person. He is an honest man of fine integrity, and I believe he will be a very fair judge and listen to the cases with a fair, open mind, and that is all we can ask for in someone going to this most important court.

Judge Thomas has spent his life overcoming the obstacles of poverty and prejudice. His real life struggle against overwhelming odds which most of us read about but never know, his success against these odds is the product of hope, hope instilled in a young Clarence Thomas by his grandparents who taught him the value of work and by the nuns who taught him how to study and learn the gratification of achievement.

Clarence Thomas' life story, Mr. President, is the American dream, and his nomination is proof that America works.

I want to mention some of his qualifications. Judge Thomas has aleady been confirmed by the Senate four times. Not once, not twice, not three times. Four times he has been confirmed by the U.S. Senate for other positions. His background and qualifications have been extremely reviewed. He has received overwhelming support for his appointment as a judge for the U.S. circuit court—he received overwhelming support as a circuit court judge.

Mr. President, the story of his childhood spent in poverty is familiar to all of us. He graduated as the only black student in a Catholic high school and he went on to receive his degree from Yale Law School. He has an outstanding record as a skilled litigator, as an assistant to then Attorney General JACK DANFORTH in 1974 in the State of Missouri. He argued his first case before the Supreme Court of Missouri only 3 days after being sworn into the Missouri bar. He practiced there for 3 years and Robert Dowd, the presiding judge of the Missouri Court of Appeals, has said Thomas was one of the best prepared and most effective lawyers to appear before his oourt.

Judge Thomas then went on to become legislative director for Senator DANFORTH, working with distinction, as evidenced by our colleague's unwavering support for Judge Thomas throughout the nomination prooess.

I salute my colleague, Senator DANFORTH, for his untiring efforts on behalf of this very fine nominee.

In 1981, he accepted President Reagan's nomination to become Assistant Secretary of Education for Civil Rights. It was with some trepidation that Thomas agreed to become the Chairman of the Equal Employment Opportunity Commission where he served two terms, from 1982 to 1990, with an outstanding record.

And then in 1990, he was nominated by the President and confirmed by this Senate for the position on the appeals court where he currently serves. Judge Thomas' qualifications and life experience will be a great asset to the Supreme Court. His direct knowledge of discrimination in the years of struggle up from the bottom of the social-economic ladder will bring a greater depth of understanding, sensitivity and experience to the court.

Mr. President, while he was Director of the Equal Employment Opportunity Commission, Clarsnce Thomas inoreased the protection minorities re-

ceived against employment discrimination. He struggled to reduce the barriers to minority employment. The EEOC became an effective Government agency under Thomas' direction. In spite of his marked accomplishments in the field, he has been attacked by some who contend he lacks sufficient commitment to affirmative action.

Mr. President, Judge Thomas' record at EEOC is clear and compelling with respect to his support for programs designed to ensure minorities an equal opportunity for employment.

True, he has not supported race-based quotas in employment practices which many of his detractors would prefer, but his commitment to true equality of opportunity in employment is difficult to challenge based on the record.

Mr. President, in my opinion, his opposition to mandatory quotas indicates an understanding that quotas enforced in the workplaoe result in greater individual discrimination because of the public's hostility toward preferences for one racial group and against another.

Commissioner Thomas changed the EEOC litigation praotices from the Commission's previous penchant for class-action suits and statistical reviews to a new case-by-case review. This shift allowed the Commission to seek full relief for every victim of discrimination. The statistics during his tenure show his success. Lawsuits filed seeking redress for discrimination by the commission increased from only 195 in 1983 to 599 in 1989. The resolutions of filed complaints increased from 38 percent to between 50 and 60 percent. Thomas' office obtained more than twice the level of damages collected during the Carter years. The EEOC is thriving now as a result of his administration. His emphasis on people over numbers has helped break down the barriers to minority employment. He thinks the individuals come first.

As Pamela Talkin, Thomas' Chief of Staff at EEOC, wrote in an article appearing in Roll Call, August 1:

Today's EEOC is a fitting and lasting tribute to Clarence Thomas' vision and his unwavering commitment to upholding the laws and protecting American workers.

Mr. President, I ask unanimous consent that the article written by Miss Talkin be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From Roll Call, Aug. 1, 1991]

HOW EEOC THRIVED DURING THOMAS' TENURE AS CHAIRMAN

(By Pamela Talkin)

The nomination of Clarence Thomas to the Supreme Court has evoked a great deal of productive and enlightened discussion. Unfortunately, it has also resulted in the repetition, however innocent, of unfounded criticisms of his record as chairman of the Equal Employment Opportunity Commission.

Clarence Thomas vigorously and effectively enforced the laws against employment discrimination. I marvel at the willingness with which generally intelligent and skeptical individuals have accepted bare assertions to the country. The record establishes that the EEOC came of age under the leadership of Judge Thomas. As his chief of staff, I witnessed it.

Why would the Republican chairman of the EEOC ask me, a Democrat and a career federal employee, to be his chief of staff? And why would a "politically correct" civil servant accept the position? Because we shared a commitment to equal employment opportunity and the full protection and vindication of the rights of women, minorities, older Americans, and workers with disabilities.

We were dedicated to the goal of making the EEOC a credible and aggressive law enforcement agency. Thomas concentrated on my law enforcement experience, ignored my party affiliation, and did not question me as to my philosophical views; my strict and single mandate from him was to help make the EEOC effective.

During his tenure as chairman, the EEOC went to court on behalf of workers 60 percent more than in previous years and collected more than $1 billion on behalf of American workers, more than during any other comparable period.

For the first time, policies were adopted requiring thorough investigation of all charges of discrimination and full redress for its victims. Workers unlawfully deprived of a livelihood were to receive a job and full backpay. Those who discriminated had to take such additional affirmative steps as discharging offending supervisors and posting notices to employees to assure them that their rights would not again be violated.

In the past, field offices make unreviewable determinations to litigate only a few of the many cases found to have merit. Under Thomas, all meritorious cases were submitted to the Commission for litigation.

Some have mistakenly assumed that the increased efforts on behalf of individual workers constituted a shift away from concern about the existence of broad-based discrimination stemming from employment patterns and practices.

To the contrary. In 1981 the EEOC had only one broad systemic pattern and practice case in litigation; in 1988 the Commission had 16 such cases in active litigation. Moreover, the EEOC, on its own initiative, actively prosecuted as broad, pattern and practice actions hundreds of cases that had been filed as individual claims.

In accordance with precedent, Thomas voted to approve settlements involving the use of goals and timetables, despite his now well-publicized personal views on the efficacy of such measures.

Reasonable people can and do differ with his views on this matter. However, the potential use of goals and timetables was involved in less than one-half of one percent of the more than 60,000 cases filed annually. A difference of opinion over the utility of this one form of affirmative aotion cannot serve as a legitimate basis for cavalier assertions and Thomas did not enforce the laws ensuring equal opportunity and prohibiting discrimination.

Judge Thomas was committed to identifying and eliminating all arbitrary obstacles to equal opportunity. Employers were required to recruit actively minorities and women and to set aside millions for the training of minority and woman employees and the establishment of scholarship funds for minority students.

Federal agencies were required to submit affirmative action plans identifying barriers to the full employment of all employees and detailing the steps to be taken to remove those obstacles.

When he became chairman in 1982, Thomas found an EEOC in disarray. Clarence Thomas not only built the infrastructure, but he also succeeded in transforming the EEOC into a respected and highly professional agency.

No one was more dismayed than Clarence Thomas when the evolving EEOC did not, on occasion, live up to its own enhanced expectations. As he often stated, we built our wagon while we were riding in it and, with 50 offices and 3,000 employees, mistakes occurred. Thomas took full responsibility for any shortcomings and redoubled his efforts to make the EEOC a formidable opponent of those who would violate the laws prohibiting discrimination.

Today's EEOC is a fitting and lasting tribute to Clarence Thomas' vision and his unwavering commitment to upholding the laws protecting American workers.

(Mr. WIRTH assumed the chair.)

Mr. SYMMS. Mr. President, in spite of this record, Judge Thomas has been attacked by the traditional civil rights leaders. Their opposition to this nomination is not based on his qualifications or facts about his record as EEOC Chairman, but on ideological differenoes.

That is what their opposition is based on. They have a right to that. But that is what their opposition is based upon. He is not liberal enough to suit the leadership. That is the problem. For them, there is but one way to fight employment discrimination: hiring quotas. Clarence Thomas has incurred the wrath of the liberal establishment by promoting other forms of affirmative action.

In an article in the Miami Times on May 28, 1987, Judge Thomas argued that,

Employere can hide behind the number of minorities employed without ever truly providing equal employment opportunities for individuals to be hired and rise through the ranks on their own merit. This is the basic drawback of affirmative action programs implementing goals and timetables—the employer can hide discrimination by showing a good bottom line.

Because of his skilled leadership at EEOC, Mr. President, employers today know that if they discriminate, they will be punished and they will pay.

Attacks made by civil rights organizations in my view are wholly unfounded and the rank and file members of these organizations know it.

Tony Brown, a respected black columnist, has accused the civil rights leadership of being out of touch with the majority of black America. Several local NAACP officials gave their approval to Thomas until the national office threatened to disband them unless they fell in line with the national leadership.

The opposition of other national interest groups must be looked at in a similar light. For example, the National Bar Association, which rep-

resents the Nation's black lawyers, has opposed his nomination. But while 128 voting NBA delegates were against the nomination, 124 favored it, and 31 delegates did not vote. While this clearly is a majority opposed, it certainly is not a mandate. And this is typical of the split in many of these national organizations.

ABORTION

Other organizations announced their opposition early because they feel certain Thomas would vote to overturn the Roe versus Wade decision. As a Senator who has consistently voted prolife, I have to say the slender record of Clarence Thomas' reflections on this issue, including his testimony before the Judiciary Committee, does not give me the same level of confidence about tbe decision Justice Thomas would reach in such a case. My decision to support this nomination is not based on any certainty about Justice Thomas' position in a review of the Roe decision because we just don't know what his position will be.

During the Judiciary Committee hearings, Judge Thomas was asked over and over about his position on abortion. His answer was that he oould not give an opinion until he saw the specific case before him. To do otherwise would be to prejudice his decision. His record shows he is capable of impartial decisions and we in the Senate should respect his obligation and commitment to such impartiality.

And let me say this: Certain organizations like the National Organization of Women have opposed Thomas' nomination because of his supposed stand against abortion, notwithstanding the lack of clear evidence. One is left to conclude, therefore, that only those nominees who explicitly affirm the decision reached in Roe will garner the support of these organizations in the future.

That is their right. But that should not be, in my opinion, sufficient reason for a Senator to vote against Clarence Thomas. The fundamental question is, Will he be a fair judge and listen to the cases with an open mind.

It is the prerogative of the national interest groupe to support or oppose the nomination based on a single issue, but I do believe those of us in the Senate shouid be above such a narrow focus, particularly when the reoord is unclear.

I think Clarence Thomas is in a catch-22 situation personally. If he makes it clear on every issue and tries to rule, predetermine how he would rule on hypothetical cases, then he will antagonize certain blocks in the Senate, groups that would oppose him. If he does not state a firm opinion, they say, "Well, he would not state his opinion, so we are going to vote against him."

Perhaps the most important consideration for this Senator is whether Judge Thomas will legislate from the bench or make his decisions based on legal precedent, a proper deference to the legislative branch, and the restraining commands of the Constitution.

Coalitions for America has compiled an impressive record of Judge Thomas' regard for and adherence to legal precedents regardless of his personal views on a case.

Even in cases where Judge Thomas has had an opportunity to push a conservative agenda, he has instead practiced restraint. In Action for Children's Television versus FCC Thomas joined an opinion rejecting a totai ban on broadcast indecency. The court's majority held that circuit precedent compelled it to strike down the indecency ban.

In a classio example of judioial restraint, Doe versus Sullivan, a soldier involved in Desert Storm challenged the use of experimental drugs by the Department of Defense. The gulf war ended before the case came to court. Where an activist judge may have used the case to solve the controversy, Judge Thomas argued the case was moot, showing his determination to stay within his court's jurisdiction and properly establishing the court's authority before deciding the merits of a case.

In his opinions as a circuit court judge, Clarence Thomas has shown his ability to weigh the law and impartially make a decision based on sound legal principles. Even the Alliance for Justice, a group that has declared war on Thomas' nomination, conceded that his decisions "do not indicate an overly ideological tilt."

CONFIRMATION PROCESS

During the Judiciary Committee's hearings, Judge Thomas was repeatedly grilled on the abortion issue. It appears that some Senators are making their decisions based entirely on their perception that given the chance Judge Thomas will overturn Roe versus Wade. In my opinion, Judge Thomas has done the right thing in not giving specific responses on such politically volatile issues that may soon come before the Court. It would prejudice his ability to have an open mind.

Taylor Stuart, a legal commentator, put it correctly when he warned that for the Senate to exact some pledge from the nominee to vote one way or the other on an issue before even seeing a case would be coming "perilously olose to * * * making campaign promises."

I hope the Senate in its wisdom will not make its judgment against the candidate based on his unwillingness to make such campaign promises.

I think President Bush deserves the commendation of the Members of the Senate for picking a very fine man with a very fine record to become the next Justice of the Supreme Court of the United States. He is a qualified judge. He is an American success story.

I am pleased and proud to be able to support his elevation to the highest Court in the land.

Mr. President, I yield the floor.

UNANIMOUS-CONSENT AGREEMENT—CONFERENCE REPORT ON S. 1722

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report on S. 1722, the unemployment benefits bill; that upon the completion of the debate today and the raising of a point of order by Senator DOMENICI, or his designee, and the relevant motion to waive the Budget Aot by Senator SASSER, or his designee, the conference report be laid aside until 10 a.m. on Tuesday, October 1, at which time there be 1 hour for debate equally divided in the usual form on the motion; and that after the use or yielding back of time, the Senate, without any intervening action or debate, vote on the motion to waive the Budget Act; that upon completion of that vote, the Senate proceed to final disposition of the conference report without any intervening action or debate.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. MITCHELL. Mr. President, I am advised by the distinguished Republican leader's staff that this has been cleared and is agreeable to the Republican leader.

The PRESIDING OFFICER. Without objection, the unanimous-consent request is agreed to.

Mr. MITCHELL. Mr. President, I again thank my colleagues for their courtesy.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is now closed.

EMERGENCY UNEMPLOYMENT COMPENSATION—CONFERENCE REPORT

Mr. BENTSEN. Mr. President, I submit a report of the committee of conference on S. 1722 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee of conference of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1722) to provide emergency unemployment compensation, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their repective Houses this report, signed by a majority of the conferees.

how severe the unemployment is in your particular State. We have States with unemployment rates of 8, 8½, 9, 9½ percent of people in those States who are not drawing extended benefits.

So you bet your life it is sad to know the funds are there but the President will not release them. Let me go on with this letter.

People have this idea being unemployed is fun. It is not. It is extremely depressing. Everyone thought I was lucky having the summer off. I did not enjoy one day of this summer as I was worrying about getting a job. It is on your mind constantly from when you wake up in the morning until you go to bed at night. And then, if you should wake up during the night, it is right there hounding you.

No, I am not lazy and I do not believe many unemployed people are. They are just victims of a situation that is called a recession, for which my 77-year-old mother calls a depression. She is probably right.

If things are turning around and the rscession is ending, then I would like to know in what country this is happening. I hope I do not have to go on welfare as I am not that type of person, but you really think about it when things get so bad.

Then, I quoted this before, but I want to repeat it to paint the picture of the kind of psople we are talking about.

If you want statistics, I will give you mine. I am a whits, middle-aged female, single parent of two, head of household. I raised my sons basically on my own since they were 3 and 5. I worked full time from when they were 7 and 9. I had them in all the sports programs I could. I worked 10 minutes from the House so I could be available should something happen to them and they needed me.

My sons are turning out to be good men. They are both in college and have always been clean, decent, individuals. They really never gave me any major problems, just the normal ones every parent has with their children.

I do not want any praise or desire any for what I have done. They were my responsibility and I lived up to it.

Let me just repeat that sentence because I think it says a lot about the character and the moral fiber of a person who wrote me this letter.

Talking about bringing up her two sons, and her pride in them now, they are turning out to be good men.

I do not want any praise or desire any for what I have done. They were my responsibility and I lived up to it. What I want now is help from the Government until things get better for me and all the thousands of people that are in the same situation.

Please kesp fighting to get this money released for the people that need it so badly. Please do what you can to help all of us out. We do not want it, we need it, and we need it now. Please see what you or your fellow Senators can do to help get this country back on ite feet, or else this country will be gone. I know it sounds stupid, but I think it could happen if we do not help ourselves and each other. We are falling off the face of the Earth, and no one cares.

Mr. President, let me just read briefly from one other letter before closing this presentation.

DEAR SENATOR SARBANES: I am writing to you regarding a serious crisis that existe nationally. This subject is a lack of adequate unemployment benefits for working men and women. What has been allowed to happen in this country has been a disgrace. I am writing to you as one of thousands of people who have been laid off from their job this year. My unemployment benefits expired August 15, 1991, and I am one of the very people affected by President Bush's decision not to fund the extended employment program.

As I stood in line every other week, I got to hear firsthand the concern and the voices of the people. The first blow was losing their job.

I want to stop there. Nobody stops and thinks about the psychological trauma that the people experience upon losing their job.

The first blow was losing their job. The second was seeing the United State Government abandon them in their hour of need. These are the hard working people that have, over the years, made this country great. These were workers who have held the same job, in many cases, for numbers of years.

The previous lady I quoted from held a continuous job for 12 years with the same employer.

I read in the papers that there is no end in sight to this current recession. I have collected article after article stating that unemployment is rising. I wonder if anyone else is getting this information. If this is happening, then why doesn't President Bush allocate the funds? What constitutes an emergency? Whenever the unemployment rates have been this devastating in the past, the Federal Government has automatically stepped in.

The correspondent is absolutely right. In the past recessions, the Federal Government did step in. The number of people drawing extended benefits rose markedly, but not in this recession, not in the administration of President George Bush.

Let me go back to the letter:

What has made this emergency different? Could it be that no one wants to admit there is an emergency? As I said earlier, what a disgrace. There are thousands of emergency programs in this country for the needy, and they receive benefits for just being needy.

In fact, Mr. President, as an aside, let me say that the Baltimore Sun paper of yesterday carried an article that the level of welfare recipients in our State has risen to the highest level in 10 years. Working people who paid for unemployment benefits and built up the trust fund, now out of a job, entitled to the use of these moneys, are using up their savings and then being driven into welfare.

Let me read this paragraph:

There are thousands of emergency programs in this country for the needy, and they receive benefits for being needy. This extension and unemployment benefits, in general, are programs for the middle-class working people who have fallen on hard times. They have contributed to this Government. They will pay income taxes on this money. This isn't a handout. This isn't a freebie. These people will contribute again. It has been proven. This country is in jeopardy of losing one of ite natural resources. The United States was made great by working people. This Government should show dedication and loyalty to these people, who have contributed both financially with their income tax dollars, and physically with their hard work.

We call on the President of the United States to evidence that dedication and loyalty to people all across this country, who have contributed both financially and physically to the strength of this Nation and now find themselves in crisis.

As one correspondent said:

We are falling off the face of the Earth, and no one cares.

It is time, Mr. President, to care for these people. It is long past time to use these large surpluses, specifically committed to paying unemployment, to meet this misery. That money was paid for a specific purpose, and it is an abuse of the understanding with employers and employees all across this country not to respond now when they find themselves in desperate need.

Mr. President, this conference report addresses that desperate need. This is a strong response to the cry—the plea—that we hear from across the country, to come to the aid of hard-working Americans who have fallen on hard times. There is an emergency here at home. We call on President Bush to recognize that, not only to recognize the emergencies abroad, but to recognize the emergencies here at home.

Mr. President, I strongly support this conference report. I urge the President to sign it. It is desperately needed. We can no longer ignore this cry for help that has come to us from all across the land.

Mr. President, I yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER (Mr. LIEBERMAN). The Senator from Ohio, Mr. METZENBAUM.

Mr. METZENBAUM. Mr. President, I rise for a different purpose, but before speaking to that purpose, I want to commend and thank my colleague from Maryland, who has so well addressed himself to the problems of the unemployed of this country and the effort on the part of those of us in Congress to deal with that problem.

He has not only spoken about the elementary aspscts but he has also talked about the impact upon the families and what it means to the American people. I speak for many of my colleagues when I express my appreciation to him for his dedication, his determination, the resources he has put into this effort and the magnificent remarks he has made today. I thank him on behalf of so many.

Mr. SARBANES. I thank my colleague for his kind comments.

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. METZENBAUM. Mr. President, the Senate Judiciary Committee this morning, just a little while ago, voted 7 to 7 on the nomination of Judge Clarence Thomas for the Supreme Court.

This split vote in the Judiciary Committee is dramatically different from the predictions that were made when Judge Thomas' confirmation hearing began.

Then we were told it will fly through; it will move through rapidly; there is no question about it; Judge Thomas will be confirmed.

Two-and-a-half months ago, Judge Thomas' nomination was regarded as a shoo-in. It was just an easy go. Even 2 weeks ago it was still regarded as a sure thing. But today, Judge Thomas was unable to muster support from a majority of the Judiciary Committee, and that is because they had heard him and inquired of him and heard the 90 witnesses who had spoken before the committee and realized there was a problem, a question as to whether or not this man belongs on the Supreme Court. Seven members of that committee decided he did not.

The reason for the turnaround is simple: The members of the committee have taken the time to study the lengthy and oontroversial record of this nominee and to reflect upon his evasive and at times implausible testimony before the Judiciary Committee.

The message for the entire Senate is unmistakable: If Senators will only take the time to examine carefully Judge Thomas' record and testimony, they will come away with a very different perception of him than was created by the White House media blitz this summer.

I entreat with, I plead with, I encourage, I urge my colleagues in this body to look at the record, look at the record, read the record, just see the implausibility of the responses that we received from this man who aspires to be on the Supreme Court.

If Senators examine his record, his credentials, and his testimony before the committee—and then reflect upon the fact that this man could be on the Supreme Court until the year 2030—until the year 2030, 40 years from now—I believe that a majority of this body will conclude that Judge Thomas should not be confirmed for the U.S. Supreme Court.

Despite the confident predictions of the White House, the confirmation of Judge Thomas is not a foregone conclusion. And no Senator should be stampeded into voting for this nomination without careful consideration of his qualifications and record and without proper deliberation on the floor of the U.S. Senate.

Much is being made about the need to rush our deliberations to put Judge Thomas on the Court by October 7. But another few days does not matter when you are talking about a man who could be on the Court for 30 or 40 years. We owe the American people nothing less before the Senate selects one of nine people who are the final arbiters of the law of this land.

I entreat with you, I plead with you, get a copy of the record, go back and see what Judge Thomas' answers were and the answers that he failed to give before casting your vote on this most critical and crucial matter. We are talking about confirming a man for the Supreme Court of the United States. It deserves your total attention. The American people are entitled to it.

Mr. President, I yield the floor.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BURNS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BURNS. Mr. President, might I inquire of the parliamentary situation? What is the pending business?

The PRESIDING OFFICER. The pending business is the conference report on the unemployment insurance bill.

Mr. DOLE. Mr. President, I ask unanimous consent that the Senator may proceed in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Montana.

Mr. BURNS. I thank the minority leader and I thank the Chair.

COMMUNICATIONS AND EDUCATION

Mr. BURNS. Mr. President, I have said it before and I will say it again—if we are to remain competitive as a nation, we must invest in education.

On September 13, 1991, the Wall Street Journal ran an article describing one innovative way we are investing in the educational future of our children, and that is through the use of advanced communication technologies that bring education to students in settings outside the classroom. Called distance education or distance learning, schools are using combinations of television, satellite, computer, videodisc, and telephone technology to reach people who cannot attend classes because of geographic location, jobs, or home responsibilities.

As we struggle with how to achieve the national education goals that all of us agree are critical to America's future, the communications industry, the Corporation for Public Broadcasting [CPB], and the public broadcasting industry in particular, have been working with educators to adapt existing, and develop new, technologies to bring quality education to students regardless of geographic or economic location.

Former Secretary of Education Terrel H. Bell, who served under President Reagan from 1981 to 1985, recently added his voice to the national debate on education with publication of "How to Shape Up Our Nation's Schools," calling for immediate investment in high technology for our Nation's schools. As we search for a new direction when it comes to public education, former Education Secretary Bell is right on target when he says that one of the most pressing calls is to introduce new communications and computer technologies into our schools.

Not every school system can afford the latest computer and satellite systems, but they do have phones. If we can give our schools the ability to retrieve information through fiber optic phone lines, we will open the doors of opportunity to our children. And believe me, the world our children could tap into through fiber optics is a marvelous one indeed.

Imagine America's students dialing-up a guest lecturer in any classroom in the world via a two-way interactive audio and visual network or tapping into the books, audiotapes, and videotapes of any library in the world. With fiber optics, our children can have full motion video learning tools right at their fingertips.

I recently introduced legislation to promote nationwide deployment of a fiber optic communications system. S. 1200, the Communications Competitiveness and Infrastructure Modernization Act of 1991, sets a new national goal that, by the year 2015, the United States establish an advanced, interactive, broadband communications network that would be available to all homes, businesses, educational institutions, health care organizations, and other users. The bill also requires that the rate of deployment of fiber optics to rural and economically disadvantaged areas occur at a rate reasonably related to the rate of deployment to more populous and affluent areas.

For large rural States like my home State of Montana, or for inner-city school systems struggling with limited resources, the impact of such a system on education could be dramatic. Fiber optics will make it possible for all schools, whether rural, urban, or innercity, to have equal access to information. And the possibilities of what our kids can do with that information is limited only by their minds.

In Montana, we are already jumping into the information age of the 21st century with both feet first.

Tele-Communications, Inc. [TCI], the leading cable television company in the Nation and Montana, has committed over $300,000 in funding and support for an educational network throughout our State. The interconnect will link several of Montana's schools, colleges, libraries, and workplaces via cable television and satellite technology and offer educational and job training op-

FAMILY AND MEDICAL LEAVE ACT

Mr. MITCHELL. Mr. President, I have discussed the matter I am about, now, to undertake with the distinguished Republican leader. I understand that the Senator from Arizona will act in behalf of the Republican leader to make the appropriate objection.

Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 100, S. 5, the Family and Medical Leave bill.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

MOTION TO PROCEED

CLOTURE MOTION

Mr. MITCHELL. Mr. President, I move to proceed to the consideration of Calendar No. 100, S. 5, the Family and Medical Leave bill, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to proceed to S. 5, a bill to grant employees family and temporary medical leave under certain circumstances, and for other purposes:

George Mitchell, Christopher Dodd, Wendell Ford, Paul Wellstone, J.R. Biden, Jr., Daniel K. Akaka, Charles S. Robb, B.A. Mikulski, James Sasser, Howard Metzenbaum, Timothy E. Wirth, Edward M. Kennedy, Paul Simon, Patrick Leahy, Richard Bryan, Harris Wofford.

Mr. MITCHELL. Mr. President, I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion to proceed is withdrawn pursuant to the request of the majority leader.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, for the information of Senators, this procedure was by agreement between the distinguished Republican leader and myself, reflecting our disagreement on proceeding to the Family and Medical Leave bill.

As a result of this procedure, there will be on next Tuesday morning a vote on the cloture motion to proceed to the bill. That vote will occur at approximately 11:30 next Tuesday morning following other votes, the times for which have been established by a prior agreement.

I thank the distinguished Senator from Arizona for his courtesy in yielding, and for acting in behalf of the Republican leader in making the necessary objection.

Mr. President, I now ask unanimous consent that the required live quorum under rule XXII be waived on the cloture vote scheduled to occur on Tuesday, October 1, on the motion to proceed to S. 5, the Family and Medical Leave bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. I yield the floor.

The PRESIDING OFFICER. Under the unanimous-consent agreement, the Chair now recognizes the Senator from Arizona.

Mr. MCCAIN. Mr. President, first of all I would like to associate myself with the remarks of my good friend and colleague from Montana, Senator BURNS. I think his words are filled with wisdom and foresight and I look forward to working with him as we attempt to address the very important challenge that he has so adequately described.

CLARENCE THOMAS

Mr. MCCAIN. Mr. President, often in Congress, we talk about finding role models for our youth among the leaders in our country. We advocate the view that any person, of any walk of life, of any race, can be anything he or she chooses to be, if that person has the conviction do so, and a steadfast belief in the sacred document which makes this possible, the American Constitution.

President Bush's nominee for the Supreme Court, Judge Clarence Thomas, is such a person.

Self-reliance is the cornerstone upon which Judge Thomas' life as a jurist is built. Since his nomination, the American people have gotten to know the story of a man who was raised with little material benefits, but was rich with the love and encouragement of family, and the dedication of teachers. Above all, Judge Thomas was raised with the belief that hard work brings its own rewards. His brilliant career stands as testimony to the truth behind this principle.

Judge Thomas is no stranger to the plight of underprivileged Americans. He has lived it. Born in Pinpoint, GA, he experience poverty, segregation, and all of the hardships inherent to these conditions. Despite this, Judge Thomas focused on the duty which he felt was most important, which was attaining an education. His childhood years were spent in Catholic schools in Savannah, GA. He worked long and hard. His reward was successfully completing his undergradaute work at Holy Cross College, and then receiving his law degree from Yale Law School.

While these achievements alone distinguish him as an outstanding scholar, it exemplifies an even greater strength, and that is a deeply felt conviction that, with the freedom we enjoy in this oountry, we can overcome tremendous obstacles to reach our goals. Upon accepting President Bush's nomination, Judge Thomas shared this conviction as he stated, "In my view, only in America could this have been possible."

Judge Thomas' experience in both the public and private sectors complement his distinguished academio career. My colleagues, Senator DANFORTH and Senator BOND, have given testimony to his excellent qualifications after Judge Thomas worked for them, first, in the office of the Attorney General of Missouri where Senator DANFORTH served as attorney general, and later, as a staff member in the Senator's Washington office. In between, Judge Thomas worked as an attorney for the Monsanto Co. in St. Louis.

On May 17, 1982, Judge Thomas began his tenure as Chairman of the U.S. Equal Employment Opportunity Commission [EEOC]. He served at the EEOC for 8 years, where, as many have stated before me, he turned a rapidly aging system into a responsible agency which provides for a speedier process of resolving cases. This does not only mean that Clarence Thomas was a highly organized Chairman. It shows his sensitivity to the plight of many whose only hope is a system where they can have their grievances heard and promptly decided under the principle of fairness. Any undue delay is an injustice, and Clarence Thomas would not stand for such an injustice under his leadership.

His achievements at the EEOC have been praised by many, including the Washington Post, which stated in the headline of its editorial appearing on August 1, 1987, "The EEOC Is Thriving." The editorial went on to praise then-Chairman Thomas by underscoring his success at the agency under this "quiet but persistent leadership."

A few have expressed fear that Judge Thomas is insensitive to minorities, and that this alleged insensitivity will govern when he casts his votes on the Supreme Court. On the contrary, Clarence Thomas' background will provide the Court his firsthand experience as a member of a minority group in this country. Margaret Bush Wilson, former chairperson of the National Board of Directors of the National Association for the Advancement of Colored People, agrees. In an article appearing in the Washington Post, Ms. Wilson states:

Judge Thomas reflects the diversity and complexity of African-American thinking * * * he has pushed for a new frontier in civil rights, * * * [and] seeks a climate where African-Americans and other minorities feel empowered to compete equally with their counterparts of other races. * * *

Ms. Wilson's view of the role Judge Thomas would play as a Justice of the Supreme Court is insightful.

A few opponents of Judge Thomas' nomination voiced their opposition even before the nomination hearings began. It is a shame that those few were not able to benefit from hearing from the nominee himself before reaching a decision. Had they done so, they would have likely reached the same conclusion as the Washington Post expressed in its editorial of September 15, 1991, which declares the nominee "qualified to sit on the Court * * * [with] a clearer sense of discrimination and its remedies than any other member of the court * * * we think he should be confirmed."

Mr. President, I ask unanimous consent that the Washington Post editorial and the other articles I cited be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Aug. 6, 1991]

THE NAACP IS WRONG ON THOMAS

(By Margaret Bush Wilson)

The young man standing at my door that summer day in 1974 looked like an African prince. "Hello, I'm Clarence Thomas," he said. "I know," I replied. "I've been expecting you." And so began a friendship with someone I think of fondly as a second son.

I first heard of young Thomas (then almost 26) from his employer-to-be, Sen. John Danforth (R-Mo.), who was attorney general of Missouri at the time. Mr. Danforth told me he had just hired a bright young law graduate from Yale and asked if I knew of a place the young man could live for the summer while studying for the Missouri bar. My own son, Robert, was then a law student with plans to work that summer in Washington. I invited young Clarence to stay in my son's empty room.

I don't recall seeing another young person as disciplined as Clarence Thomas. First thing, every day, he would exercise with my son's weights and then be off to his studies. I asked of him only one thing: I would prepare dinner, and he would show up on time. We would eat together every night, often with one or two friends or relatives and talk about any and all of the problems of the world.

We didn't always agree (Clarence was "conservative" even then), but I was impressed continually with one so young whose reasoning was so sound. I must also admit that his arguments, both legal and logical, forced me to rethink some of my own views. I knew I sometimes made him see things differently, too, because Clarence Thomas knew how to listen as well as talk.

Across the years, I have kept in touch with Judge Thomas and to this day I respect his integrity, his legal mind and his determination. Even when we disagree, I have found him to be a sensitive and compassionate person trying to do what is right, working to make the world a better place.

Back then I sensed that he would one day be in a position to have a larger impact, but I had no way of knowing that this determined young man might one day have the chance to tackle some of our country's problems on this nation's highest court.

Recently, the NAACP National Board took action opposing Judge Thomas's nomination. I wish it had withheld judgment until after the hearings, because the Clarence Thomas I have been reading about often bears little resemblance to the thoughtful and caring man I have known over these years.

Judge Thomas reflects the diversity and complexity of African-American thinking, but his views are not nearly as radical as his critics suggest. He has pushed for a new frontier in civil rights, and heaven knows we need one when one-third of African Americans are still in poverty as we approach the 21st century. He seeks a climate where African Americans and other minorities feel empowered to compete equally with their counterparts of other races, with rational support from government programs.

Some have said that despite his chairmanship of the Equal Employment Opportunity Commission for eight years, he has not been a champion of civil rights. Those people obviously don't know Judge Thomas or the real facts about his tenure with the EEOC. His record will speak for itself and will impress those willing to listen and look beyond misinformed rhetoric. On a personal level, he knows the struggle and hardship blacks and the impoverished of every race grapple with daily—not to mention the plight of most families, since in my judgment the central issue of our time is that some 82 percent of the families in these United States have no discretionary income after bills and taxes are paid.

We didn't talk much about Judge Thomas's background that summer 17 years ago, so it is only recently that I have learned about his humble beginnings. The cramped house with no plumbing in rural Georgia, his wise but not learned grandparents, the Catholic nuns and the rest have only recently come into full view for me. To rise above the dual curses of poverty and discrimination requires tremendous individual effort from a special kind of person, help from others and luck. All these have been present in Judge Thomas's career.

Throughout the history of the U.S. Supreme Court, I don't believe any other nominee can claim to have come so far. In point of fact, Judge Thomas's unique perspective belongs not only on the Supreme Court but in the legislature, in the work place, at city hall and on our campuses.

No one can deny that Judge Thomas would differ with Justice Thurgood Marshall on some issues. I don't always agree with the justice myself. I do believe that both men show a common, fundamental belief in the inherent worth and rights of the individual. At one of his four previous Senate confirmation hearings, Judge Thomas said, "The reason I became a lawyer was to make sure that minorities, individuals who did not have access to this society, gained access. . . I may differ with others on how best to do that, but the objective has always been to include those who have been excluded."

As young Clarence Thomas left my home at the end of the summer, he asked how much he owed for his stay. I told him that he owed me nothing, but I did want a promise from him. I asked him to promise that if he were ever in a position to reach out and help others that he would do it, just as some had done for me and as I had done for him.

He promised he would, and Judge Thomas has been keeping his word ever since, looking out for the vulnerable and victimized on the job, in the community and at the court. I know that as a Supreme Court Justice Clarence Thomas will continue to defend and protect the rights of the needy. He does not permit anyone to think for him, and he is intellectually honest.

When the history of these times is written, it will be interesting to see how historians view the position of the National Board of the NAACP—an organization committed to advancing colored people, which is opposed, on ideological grounds, to this nomination of a black man to the U.S. Supreme Court.

Let the record show that the NAACP's former national board chair respectfully disagrees with its position.

[From the Washington Post, September 15, 1991]

THE THOMAS HEARINGS

One of the truly unsettled questions in American politics is how a prospective justice of the Supreme Court should be interrogated and judged by those members of the U.S. Senate most responsible for his confirmation. If you doubt this, only recall the hearings held and the arguments generated when the last several nominees were up for consideration. It is still pretty widely accepted that a president has a right to choose justices who reflect his own philosophical predisposition and that if the nominee is to be rejected it should be on some other grounds, grounds of moral, mental or professional disqualification. It is also held, and we think rightly, that the nominee should not be required to tip his or her hand on specific decisions likely to be made in the future. These are the givens. The problem is that there are those who a) don't accept them but b) rarely say so, rarely assert that they just will not vote for someone whose political philosophy they disagree with; so they oppose in other ways.

They try to marginalize, caricature or morally discredit the nominee. Neither political party has a monopoly on this approach—it just depends which is making the nomination and which is called upon to approve it. What ensues are often essentially trick questions, which generate trick answers. Everyone on all sides becomes surpassingly cagey, figuring how the issue or exchange, is going to play, what the public relations traps are and so on. Also across the political spectrum, everyone has gotten pretty practiced and good at all this, which is what accounts for the very gamelike quality of the procedure. It's nobody's fault and everybody's fault, and it has been very much apparent in the Clarence Thomas hearings and the arguments they have inspired in the prss and among lobbying groupe in the past week, just as it was in the hearinge of his recent predecessors.

We don't want to be hard on the procedure; it is true that in the past week thers were some interesting, even illuminating exchanges and that some things became clearer, not murkier as a result. But there was also much adjustment of perspective in keeping with the two sides' new imperatives. It was, for example, said by critics of Judge Thomas that he and his supporters dweit at far too great length on his personal background, his experience of discrimination and poverty and struggle, as a qualification for the job—as distinct from the requisite legal experience. His supporters, naturally, challenged this complaint. The last time around, they were on opposite sides: the critios of New Hampshire's bookish bachelor, David Souter, had much to say about how his limited life experience would likely inhibit, even deform, his ability to understand the oases before him, never mind the extent of his judicial background—while the Souter supporters took the other line.

Did Judge Thomas modulate, trim, bob and weave during the questioning? Well of course he did. From time to time, it seemed to us he dodged excessively, even though you could

construct a defense of his extreme defensiveness in light of some of the traplike questioning. We think the charge of total and instantaneous conversion is not fair, however. For example, some of the things Judge Thomas said on the agitated matter of natural law had been said to this same committee by him at his hearing in February of 1990, when he was appointed to the U.S. Court of Appeals. Specifically he had told the senators: "But recognizing that natural rights is a philosophical, historical context of the Constitution is not to say that I have abandoned the methodology of constitutional interpretation used by the Supreme Court. In applying the Constitution, I think I would have to resort to the approaches that the Supreme Court has used. I would have to look at the texture of the Constitution, the structure. I would have to look at the prior Supreme Court precedents on those matters."

Our own sense, on the strength of what we know of his record and the testimony given so far, is that Clarence Thomas is qualified to sit on the court. He is surely not the most eminent jurist who could have been selected, but neither have many of his predecessors been. His views, particularly on what are called broad remedies in civil rights cases, are conservative. An administration whose views are also conservative in this area is unlikely to produce any other kind of nominee. It is not clear to us that in every respect these views are wrong or that Judge Thomas's mind is closed, and in any case, in its episodic resistance, the Judiciary Committee has cleared with scant attention or dissent nominees, now justices, whose similar views on the subject are equally strong or stronger.

Nor did we think Judge Thomas comes to the court or this point in his life with a malign or distorted agenda. Quite the contrary. There has perhaps been too much talk about how he beat the odds and rose out of poverty and segregation in rural Georgia 40 years ago. Maybe not even he can be sure of all the effects this had on him. But one thing is sure: He will have a clearer sense of discrimination and its remedies than any other member of the court, any other nominee this administration is likely to send up—and any of the members of the Judiciary Committee now judging him. There seems also to be a streak of individualism in him, a turn of mind that will not easily accede to the prejudices and popular passions that sweep the day. On the strength of the hearings so far, we think he should be confirmed.

[From the Washington Post, Aug. 1, 1991]

THE EEOC IS THRIVING

Civil rights advocates have apparently given up on the Civil Rights Commission and disagree only on how little should be appropriated for the agency. Some groups have even suggested that the Treasury save the money and abolish the CRC altogether. This is probably due to the sharp philosophical disagreement between traditional civil rights lobbyists and those now leading the panel, most of whom have been appointed by President Reagan. Or it may simply reflect the fact that the commission, whose work was so vitally needed and so widely supported in the late '50s and early '60s, no longer seems to be fulfilling a function.

Another important executive agency charged with civil rights enforcement—the Office of Civil Rights in the Department of Education—has been hamstrung since 1984, when the Supreme Court sharply limited the scope of the law prohibiting discrimination by recipients of federal funds. Because Congress has not yet acted to overturn that ruling by legislation, OCR—even if its leaders were willing to act aggressively—has been unable to move against many kinds of discrimination that had been its responsibility before.

But things are markedly different at the Equal Employment Opportunity Commission, the federal agency created in Title VII of the Civil Rights Act of 1964 and charged with rooting out employment discrimination. Here, the caseload is expanding and budget requests are increasing. Under the quiet but persistent leadership of Chairman Clarence Thomas, the number of cases processed has gone from 50,935 in fiscal 1982 to 66,305 last year. In the same time period, legal actions filed went from 241 to 526. To handle this much larger caseload and higher litigation level, this year's budget request was a record $193,457,000. That's one-third more than was spent at the beginning of this administration and $28,457,000 over last year.

Domestic budget requests, even for meritorious programs such as this, are being cut with a vengeance, and the request for the EEOC is no exception. The House did vote a $13 million boost, and the commission has asked the Senate to restore the full amount requested. Whether that is possible, given other budget constraints, is uncertain. But legislators who care about civil rights enforcements have a special obligation to sustain an agency doing this work and enjoying, to an unusual degree in these times, the support and encouragement of the administration.

Mr. MCCAIN. Mr. President, Judge Thomas is an honorable, sensitive, hard working, and fiercely independent jurist. I will vote with what I believe will be an overwhelming majority of my colleagues to confirm his nomination to the Supreme Court of the United States. Mr. President, I cast that vote without reluctance, without concern, but with pride, with great pride that this wonderful Nation of ours can produce an individual which we can point to with pride in his achievements and his future magnificent contributions to this great Nation of ours.

In my view, Mr. President, Judge Thomas is what this country is all about.

Mr. President, I yield the floor.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER (Mr. BURDICK). The Senator from Missouri.

CLARENCE THOMAS—THOUGHTFUL, ABLE, AND COMMITTED

Mr. BOND. Mr. President, I would like to thank my colleague from Arizona for that very fine statement on behalf of my very good friend, Judge Clarence Thomas. I was one of six Senators who had the privilege of presenting Judge Thomas to the Judiciary Committee. My senior colleague, JACK DANFORTH, obviously has worked very long and hard on behalf of Clarence Thomas because he, better than any of us here, has the opportunity to know Judge Clarence Thomas and to know of his legal ability.

I know Judge Thomas primarily as a personal friend. I might be apt to say he worked for me. Actually, I was a client of Judge Thomas' when I was Governor of Missouri in the early 1970's and Judge Clarence Thomas was then an assistant attorney general. He was called upon from time to time to defend the actions of the Governor. We took on many of the old political customs in Jefferson City, and they did not go away easily.

One of the measures I did was to stop the practice of having Governors issue low-number license plates to their political friends. I felt it was far better to have a fair system in which anybody who wanted a specialized plate could pay for that plate, get in line to take a plate if it was not available. Ultimately, that was adopted by law. But before that happened, we had to fight off a number of lawsuits by people who wanted to retain their plates, and Clarence Thomas was the attorney who drew the short straw and had to defend that practice.

On that and many other occasions, Clarence Thomas was a very capable attorney, even though he may not have been dealing with the very best clients or the best causes around. I could tell you that, from my experience, the strongest proponents of Clarence Thomas are those people who know him best. They know of his integrity, they know of his character, and they know of his intellect. I will tell you as I travel around Missouri and speak to Missourians, black and white, from the north, south, east and west, there is great enthusiasm for Judge Thomas, because of his background and because of his demonstrated ability.

Nothing that I have seen or heard in the confirmation hearings would in any way cast doubt on Clarence Thomas' ability to serve on the Supreme Court. He has refused, as most other candidates for judgeship have, to say how he would rule on specific cases. As I understand the law, we are supposed to let judges hear the arguments and the facts before they make a judgment. He has also not responded to questions that were statements as perhaps those who stated the propositions would like. But he has shown himself to be thoughtful, able, and committed.

I, therefore, urge my colleagues to support Clarence Thomas for this nomination.

FAMILY LEAVE COMPROMISE

Mr. BOND. Mr. President, I rise today to address a question that we are going to be voting on next Tuesday, and that is the cloture motion on family and medical leave. I take this opportunity because in the busy work schedule laid out on Tuesday, there may not be an opportunity for us to air some of the views that I think are very important on this issue.

As a general rule, I am strongly opposed to governmental mandates. I am

to the military with no strings attached.

This agreement changes the landscape. No longer can the administration argue that we need to continue to bankroll the Salvadoran military at the expense of other foreign aid programs that are far more deserving. We should drastically cut our military aid and shift those funds to programs to help the combatants on both sides reintegrate into civilian life and join in rebuilding their country.

Finally, Mr. President, I want to mention the Jesuits' case. The trial of the seven enlisted men and one colonel charged with those gruesome murders is to begin today. It is the first time in the history of that country that military personnel have been tried in a civilian court for violating human rights, which is indicative of both the depth of the injustice that has existed in El Salvador and of the changes that are taking root there.

I welcome this trial and am convinced that had it not been for the relentless pressure of our Ambassador and the support of President Cristiani, it never would have happened. But I cannot overlook the fact that the Salvadoran military have done their best to obstruct justice and subvert the truth at every turn.

Few in El Salvador, including the Salvadoran judge in the case and our own officials there, believe that the military officers who ordered these heinous orimes are among those charged. This trial falls far short of the thorough and professional investigation and prosecution that the Salvadoran people were promised and deserve. 0

DEATH OF THEODOR "DR. SEUSS" GEISEL

Mr. BUMPERS. Mr. President, I have been sitting in my office listening to a lot of magnificent pronouncements on the world affalrs. I rise for a slightly different purpose today, but no less important than it is to pay tribute to a great American who died 2 days ago—Theodor S. Geisel, better known to generations of children and parents all over the world as Dr. Seuss.

Dr. Seuss was born in Springfield, MA on March 2, 1904, the son of immigrants. From there, he began a journey of whimsy and wisdom that is the happy inheritance of children and children at heart all over the world. More than 100 million oopies of Dr. Seuss' books have been sold, beginning in 1937 with "And To Think That I Saw It On Mulberry Street" and continuing through more than five delightful decades to include "The Cat in the Hat," "Green Eggs and Ham," "The Lorax," "Yertle the Turtle," "Horton Hears a Who," and the inoomparable "How the Grinch Stole Christmas."

His stories have become such an integral part of our culture that every one of us who has been a parent or child can picture the Cat in the Hat, the Lorax, Hop on Pop, the Sneetches, Thing One and Thing Two, the Onceler, the Ziffs, the nerds and the nerkles. And we will never forget green eggs and ham.

The Dr. Seuss stories were clear and funny, but that is not all. "The Cat in the Hat" was written as a new kind of reader, to help children learn to use our language. That unforgettable story contains only 223 words, but it suffers from no limit of literary value. "The Cat in the Hat" is a story of rhymes and reason and responsibility. Like so many Dr. Seuss stories, it has a valuable lesson for readers of any age. In "The Butter Battle Book," Dr. Seuss presented an allegory of the dangers of the cold war and the arms race. He understood the importance of environmental responsibility when the Lorax chided the Once-ler:

> Once-ler! he cried with a cruffulous croak.
> Once-ler! You're making such smogulous smoke!

What parent has not held a sick or well ohild and read these magnificent and unique stories, and upon finishing, heard "Read it again, Daddy!" or "Read it again, Mommy!"

Theodor Geisel, Dr. Seuss, was a great American original. All of us who have enjoyed the mastery of his language and the wisdom of his lessons and who, before television, kept our children at rapt attention with his never to be lost literature, have lost a great friend.

Mr. President, I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER (Mr. LEAHY). The Senator from New Jersey.

AGAINST THE CONFIRMATION OF CLARENCE THOMAS

Mr. LAUTENBERG. Mr. President, I rise today to announce that I intend to vote against the confirmation of Judge Clarence Thomas to serve on the U.S. Supreme Court.

My responsibility to advise and consent to nominees to the Supreme Court is one of the most important responsibilities I have as a U.S. Senator.

In the selection of persons to serve on the Nation's highest court, in my view, the Senate is an equal partner with the President. The President is owed no special deference, and his nominee owed no special presumptions. We owe the public our careful and thorough consideration and our independent judgment.

It is my responsibility to review a nominee's qualifications, experience, and his views—ever mindful of the public's interests. Whether we confirm a nominee can have a lasting impact on our citizens' lives, their freedom, and their access to justice.

A person who would serve on the Nation's highest Court must be of the highest character. He or she must be learned in the law. He or she must have integrity and the intellectual and educational background that's demanded. And, most important, he or she must be dedicated to the Constitution, and the protection of our freedoms.

Judge Thomas' nomination comes to the Senate at a time of major change in the Court. It is no accidental change. President Bush, and President Reagan before him, have sought to impose their stamp on the Court. They have sought a Court less protective of the most personal, individual rights of Americans. They have sought a Court less willing to expand our notions of freedom and liberty, and less willing to conform to ohanging needs and modern circumstances. They have sought a Court less ready to intervene on behalf of the powerless, the excluded, and the voioeless.

Sadly, Mr. President, they have already oome too far in achieving those goals.

Judge Thomas, I fear, would put two more hands on the rope that is pulling us backward and therefore I cannot vote to confirm his appointment.

Mr. President, muoh has been said about Judge Thomas' personal background. He told the members of the Judiciary Committee a moving story of hard work and achievement in the face of poverty, racism, and discrimination. I have no doubt that Judge Clarence Thomas knows better than any of us the pain and humiliation inflicted by racism. I have no doubt that the scars are deep and that they affect and motivate him.

Mr. President, I believe that the Court benefits from the diversity of its members. For example, I have no doubt that, apart from his legal and analytic skills, Justice Thurgood Marshall has added a special dimension to the deliberations of the Court, given his personal experiences. I have no doubt that Justice O'Connor also provides a valuable perspective that was missing before her appointment.

There are those who say we should confirm the nomination of Judge Thomas, because if we do not, the President will select a nominee who would not bring the experiences and diversity to the Court that Judge Thomas would bring.

Mr. President, I would hope that would not be so. Regrettably, this President has falled to aggressively expand the diversity of the Federal judiciary, at the trial and appellate levels. We should achieve diversity on the Court by the appointment of a dependable guardian of our rights and freedoms.

The writings and speeches of Judge Thomas ralse serious doubts in my mind about where he would be that dependable guardian. His discussion of these statements in his appearanoe before the Judiciary Committee did little

to allay my concerns that he would not apply a broad, expansive interpretation of our Constitution. I am concerned that Judge Thomas would challenge, instead of support a modern understanding of liberty and current expectations.

Judge Thomas has written and spoken about natural law as a foundation for our rights and the defense of liberty. Yet, it is difficult to discern where this natural law philosophy would lead. I am concerned that it would lead us backward.

Judge Thomas' statements about natural law have raised serious questions about his position on rights. In a now oft-quoted statement, Judge Thomas said in a speech, "Lewis Lehrman's recent essay in the American Spectator on the Declaration of Independence and the meaning of the right to life is a splendid example of applying natural law."

What Lewis Lehrman said in his essay was that the right of a woman to choose to have an abortion was a "spurious right." He argued that it conflicted with natural law, expressed in the Declaration of Independence, which should invest in the unborn a right to life.

Yet, when questioned about his favorable citation of Lewis Lehrman's article, Judge Thomas retreated. He said that he cited it only to persuade an audience that natural law should be relied upon in developing the law on civil rights and discrimination.

Mr. President, there are other indications, from his speeches and statements, that Judge Thomas rejects a right to privacy that includes a right to choose to terminate a pregnancy. In an article, he questioned reliance on the ninth amendment as a basis for establishing the right to privacy.

When questioned directly in the hearing on the right to choose, Judge Thomas was evasive, or silent.

Judge Thomas conceded, finally, that he did not quarrel with Court rulings that, based on a right to privacy, an individual could have access to contraceptive devices. First, not quarreling with a decision is not the same as agreeing. Second, he refused to address whether the right extended to cases when pregnancy has occurred. I cannot accept silence on a right so fundamental as the right whether to choose.

Ironically, Judge Thomas did not hesitate to express an opinion on the death penalty, although the constitutionality of the death penalty has been a matter before the Court. Judge Thomas did not hesitate to express his view on issues of antitrust law, although they might come before the Court.

Mr. President, the reason that Roe versus Wade is likely to be reconsidered by the Court is because the Reagan and Bush administrations have succeeded in appointing Justices who are receptive to reconsideration.

Just as we should be troubled if a nominee came before the Senate and refused to recognize the right of free speech; or the right to assemble; or the right to be free from unreasonable searches and seizures, we should be troubled by Judge Thomas' refusal to recognize a broad right of privacy.

Judge Thomas has also raised questions about whether he would upset the longstanding balance the Court has struck in reconciling conflicts between property and economic interests on the one hand, and congressional efforts to address pressing social needs through remedial legislation.

There was a time in our Nation when laws we now find so basic—like the minimum wage and hour laws—were considered unconstitutional infringements of the property and economic rights of employers. Yet Judge Thomas has stated that he found attractive the views of one legal scholar "who defends an activist Supreme Court that would strike down laws restricting property rights."

There are those who would say that our laws to protect the environment unduly infringe upon the right to own and use property as a person sees fit. There are those who have argued that our civil rights laws do the same. Yet, those arguments have generally failed before the courts. Would a Justice Thomas be more sympathetic to the right of a property owner to pollute, than in the public's right to breathe clean air? Would a Justice Thomas be more sympathetic to the right of a property owner to rent to whom he pleases, to hire whom he wants, under conditions that he sets out, than he would to the rights of the individual?

In response to questions by Senator BIDEN, Juge Thomas attempted to distance himself from this view. Yet, the record remains.

Mr. President, I am also concerned about Judge Thomas' views on how this Nation can and should remedy the harms inflicted by racial disorimination. I am concerned about whether he will support the laws and reguiations that Congress and prior Presidents have passed and adopted, to undo the lasting legacy of discrimination. His leadership of the EEOC has been questioned.

I do not challenge Judge Thomas' understanding of racial discrimination. He know it firsthand. I do not challenge his personal desire that every American be granted the opportunity to be judged, not on the basis of the color of his skin, but on the basis of their qualifications and their potential. Yet, he would abandon those remedies that are necessary and effective to redress the most egregious cases of discrimination. I cannot endorse that.

In sum, Mr. President, I cannot support the nomination of Judge Thomas because I cannot place in him my faith that he will guard and nurture the rights that we hold so dear. I cannot with confidence say that he will move us forward, guided by an expansive approach to our Constitution.

I will vote no when the question is presented to the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. DURENBERGER. Mr. President, I rise to support the nomination of Clarence Thomas to be an Associate Justice of the Supreme Court. I believe that President Bush nominated an outstanding person and I have heard nothing in the hearings or in the arguments of my colleagues to invalidate his choice. Indeed, I thought the hearings displayed a compassionate man possessing intellect and integrity.

From the very first judicial nominee I was asked to vote to confirm 13 years ago, I have used the same standard. Is the nominee qualified and are there serious reasons to question his or her integrity or judicial temperament. I used that standard to approve Abner Mikva, a very liberal appointment by Jimmy Carter and I came to a very positive judgment on him, and I come to a positive judgment on the same basis with regard to Judge Thomas.

Through the hearings and through this confirmation process Judge Thomas has exhibited, and no credible person has questioned, that he is a thoughtful man, an independent pereon, a sensitive and compassionate person, a fair man and an honest person.

As I listen to opponents of this nomination, they seem to have three difficulties.

The first is basically a disagreement with the nominator, rather than with the nominee. They do not agree with the ideology of George Bush on various issues. Well, the American people passed judgment and they decided that issue in 1988 when they elected George Bush President. We do not have the right to overturn that judgment in this process. Let me repeat that I would be making that same argument were the President not of my party.

The second point of opposition is that Clarence Thomas is not Thurgood Marshall. I will readily concede that he is not. Marshall was the conscience and the goad of the Supreme Court for two decades. There will never be another Thurgood Marshall. He was a man for his times and we are the richer for his service.

But, in the same way, I believe the value of this nomination is that Clarence Thomas is Clarence Thomas. He is not playing a role nor is he filling someone else's shoes. He is a unique, gifted, and hard-working person who will bring a much-needed presence to the Supreme Court.

The third ooncern of Judge Thomas' critics is that they cannot now predict how he will vote on the narrow issues that seem to be at the top of our current agenda. It seems to me that these critics lack historical perspective; an essential perspective when considering a life-time appointment to the Supreme Court. When Thurgood Marshall was 43, as Clarence Thomas is today, it was 1951. Thurgood Marshall was to play a pivotal role in the era of dramatic civil rights change that no one ooold predict in 1951. It was an era of social change dominated by Federal policies. Marshall was a man for those times.

What will be the dominant issues and who will be the dominant actors of the next three decades? I do not know a Member of the Senate who could stand up confidently and answer that question.

How does that inform our judgment on this nominee? First, it exposes the foolishness of judging this nominee on the basis of relatively narrow differences on bills that happen to be at the top of our Senate agenda today. Second, it counsels us to put a person on the Court whose experience, openmindedness and character tell us that he or she will fairly address challenges we cannot even imagine today.

Clarence Thomas is the product of a poor, rural family. He is a victim of racial and economic segregation. He was educated in a private university. He earned his law degree in one of the most prestigious law schools in America. He was a law enforcement official. He served as a staff member in the legislative branch. He was an official in the executive branch. And he has served as a Federal judge. It is very, very hard to imagine a life of only 43 years that involved exposure to more of the basic issues of the law. He did not just read about living in America in a case book. He lived it.

Based on his testimony before the committee, my personal conversations with him, and his personal history, I have confidence in the character of Clarence Thomas, that he can be a person for his times.

We do not approach this choice as 100 Presidents. The Constitution does not give us the job of nominating judges. It gives us the opportunity to test the character, intellect, oompassion, and fairness of a nominee. I submit that Clarence Thomas has passed that test with flying colors.

I will support Clarence Thomas because he is a person of the people, and the people will be well served to have him apply the historic truths of our Constitution in our rapidly changing world.

CONFERENCE REPORT ON EXTENDED BENEFITS

Mr. DURENBERGER. Mr. President, 2 months ago, I voted in favor of extended benefit unemployment legislation cosponsored by the distinguished chairman of the Finance Committee, Senator BENTSEN, and the ranking member of the committee, Senator PACKWOOD. And earlier this week, I again voted in favor of that identical legislation.

Although both of those bills contained certain flaws in the formulas for triggering benefits, I supported them for three fundamental reasons: First, I believe those workers who have endured extended unemployment during this recession should be allowed to receive extended benefits to tide them over until the economic recovery is fully underway. Second, both of those bills maintained the structure and integrity of last year's budget agreement by requiring the President to declare an emergency to waive the Budget Act in order to release those funds; and third, I believe the President should be persuaded to support extended benefits legislation.

Mr. President, it is imperative for the American people to know that the President does not have to declare an emergency and waive the Budget Act in order to implement extended benefits. Earlier this week, I cosponsored a substitute extended benefits bill introduced by the distinguished Republican leader, Senator DOLE, that established a more effective extended benefits formula and which was fully paid for consistent with last year's budget agreement. Had we passed that measure, President Bush clearly stated that he would have signed it into law guaranteeing that extended benefits would today be flowing to the long-term unemployed.

But, Mr. President, reading this conference report, it is clear to this Senator that we are now engaged in a cynical political game where unemployed Americans agree being held hostage to larger political ooncerns. What this conference report does is unravel last year's budget agreement allowing Congress to unilaterally declare an emergency without concurrent certification by the President.

Make no mistake, if we allow this measure to be adopted, we are establishing a precedent that will allow the democratically controlled Congress to declare domestic education, drug, health, and other sorts of emergencies, without having to operate within the discipline and confines of the budget agreement which they passed. We might as well just tear up the 5-year budget agreement and tell the American people that Congress does not care about the budget deficit.

Mr. President, I will vote against walving the Budget Act and I will vote against this effort to unravel the budget agreement. And I want to speak directly to the people of Minnesota and tell them that what they are witnessing is pure political gamesmanship.

Unfortunately, this issue is being portrayed in the media as Democrats for the unemployed, and the President against the unemployed. And the fact is, at least the fact is today, as we debate, President Bush is now persuaded to support extended benefits. The fact is that the extended unemployment benefits legislation that the President would sign, and which this Senator would support, does not break the budget agreement and would provide nearly identical benefits to the unemployed in my State of Minnesota as are contained in the oonference report.

Mr. President, just about every Member of this body has stood on the floor of the Senate to express frustration and dissatisfaction with the lack of depth in our political campaigns. Thirty-second spots, racially motivated political advertising, distorted statements of an elected official's voting record are all to be abhorred. But I believe that the political game that this conference report represents is worse than any 30 seoond ad. Because what we are seeing is real human beings, unemployed citizens of Minnesota and California and Indiana being held hostage to the politics of the 1992 election.

Mr. President, it is my hope that we will pass a responsible extended benefits bill such as the one that Senator DOLE and I have cosponsored. I hope we will pass that bill soon, for it is outrageous that we are playing politics with the lives of unemployed citizens.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. BUMPERS). Without objection, it is so ordered.

NOMINATION OF CLARENCE THOMAS

Mr. DOLE. Mr. President, let me first comment on the Thomas nomination. I urge that we have this matter before us sometime next week, maybe on Thursday, maybe on Wednesday, maybe even on Friday, but it is something I think should be disposed of as quickly as possible. The October term of the Supreme Court starts on October 7, and I think, regardless of our views on Clarence Thomas and on the nomination itself, we ought to have the debate and we ought to have the vote. I believe he will be confirmed by a oomfortable margin. In any event, I urge my colleagues, who I know will want to file reports and whatever, that we try to act on this sometime next week.

SENATE—*Monday, September 30, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 12:30 p.m., on the expiration of the recess, and was called to order by the Honorable RICHARD H. BRYAN, a Senator from the State of Nevada.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

Eternal God of truth and justice, restore to us spiritual reality that we may heed the warning of Paul the apostle: *Put on the whole armour of God, that ye may be able to stand against the wiles of the devil. For we wrestle not against flesh and blood, but against principalities, against powers, against the rulers of darkness of this world, against spiritual wickedness in high places.* Ephesians 6:11–12.

Guide us, gracious Lord, lest we abandon entirely the spiritual legacy left us by our forebears, lest we revise our history and behave as though they did not think or say or write what has been recorded of those painful and creative days more than 200 years ago. In our materialism we act as though the Declaration of Independence did not speak of a Creator God who endowed us with inalienable rights, as though freedom emerged out of an evolutionary process or was granted by Congress or the Supreme Court.

Patient God, we have been deceived by the master of deception, whose strategy is his incognito, his insistence on his nonexistence. Nobody is afraid of nothing. In our spiritual poverty, we invent our enemies while the deceiver delivers his vital blows again and again. No wonder we are losing the war. No wonder, no matter how hard we try, our society, our culture is degenerating.

Awaken us, gracious God, for Your glory and our restoration. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC., September 30, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable RICHARD H. BRYAN, a Senator from the State of Nevada, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. BRYAN thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for the transaction of morning business not to extend beyond the hour of 1 p.m., with Senators permitted to speak therein for a period not to exceed 10 minutes each.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. MITCHELL. Mr. President, following the period for morning business, which expires at 1 p.m., under a previous unanimous-consent agreement, the Senate will proceed to the consideration of Calendar item No. 121, S. 533, the EPA Cabinet-level bill, with certain amendments in order to that bill.

Those amendments will be offered and debated today, and I anticipate that they will be accepted by voice vote. If not, if either or both of the amendments should require a rollcall vote, those votes will occur tomorrow beginning at 2:15 p.m. There will be no rollcall votes today.

THE RETIREMENT OF ROY L. McGHEE

Mr. MITCHELL. Mr. President, I would like now to pay a special tribute to Roy McGhee who, after 18 years as the Superintendent of the Senate Periodical Press Gallery, is retiring today. Last week, his colleagues and friends, which included the distinguished Republican leader, Senator DOLE, and myself, joined in a reception in the Capitol to congratulate him on a job well done.

Roy McGhee was born in Jefferson City, MO, and worked for his hometown newspaper and the Associated Press before joining United Press International's Kansas City bureau, where he covered the regional State legislatures, including the activities of the distinguished Republican leader, Senator DOLE, when he served in the Kansas State Legislature.

In 1959, Roy moved to Washington, DC, where he covered every major political event—campaigns, conventions, and elections—in the 1960's and 1970's for UPI. Roy also covered firsthand the invasion of the Dominican Republic.

In January 1973, Roy was elected as the Superintendent of the Senate Periodical Press Gallery, only the second person to hold that office. Since then, he has been involved in organizing press coverage for the members of the periodical gallery, including coverage of hundreds of Senate hearings from Watergate to the recent nominations of Robert Gates and Clarence Thomas.

In the mid-1970's, as Superintendent of the Gallery, Roy had the dubious distinction of being named as a defendant in a lawsuit regarding the process by which reporters on Capitol Hill receive press credentials. The lawsuit went all the way to the Supreme Court, where the views of the Gallery were sustained.

Roy is well known as an avid and accomplished tennis player. As a dedicated walker, he is quite possibly the only person to have walked every square inch of the Capitol Grounds and surrounding office buildings.

Roy has been a familiar face in the Capitol for many years. I have especially enjoyed visiting with him these past few years in the morning meetings which I have with the press, which are informally known as dugouts.

I know that I speak for all Members of the Senate when I say good luck and best wishes to Roy McGhee. He has served well. He will be missed by all.

Mr. President, I yield the floor.

Mr. WELLSTONE addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Minnesota [Mr. WELLSTONE] is recognized.

Mr. WELLSTONE. Thank you, Mr. President.

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. WELLSTONE. Mr. President, the decision as to whether or not to confirm Clarence Thomas to be the 106th Supreme Court Justice in the United States of America is as important a de-

cision as I will make in the U.S. Senate.

Mr. President, let me talk about this with a sense of history, perhaps as a former political science teacher or professor. At the Constitutional Convention, it was very clear that there would be two branches of Government, the executive and the legislative branches of Government.

The debate that took place had to do with how the judicial branch of Government would be created. The decision that was made was that the executive branch and the legislative branch were to be coequal partners in making this decision. And the reason that everybody understood that this was such an important decision has to do with the very distinctive and critical power that the Supreme Court has, which is the power of judicial review. That really is the power of validation; that is the power to declare constitutional or unconstitutional the laws of the land.

It was also understood, Mr. President, at that Constitutional Convention—and I think all of us in the country need to understand this—that the Supreme Court remains the one institution that can really protect all of us against any usurpation of power that might take place by the legislative branch, or might take place by the executive branch; that the Supreme Court of the United States of America is, in fact, the one branch of the Government which is the guardian of first amendment rights, which by the way are the rules that we agree to live by in a democracy; and that the Supreme Court of the United States of America is the only institution where every citizen, every citizen, regardless of income, has absolutely equal constitutional standing.

It is also important, Mr. President, to understand that a Supreme Court Justice is not elected; that a Supreme Court Justice can serve for decades; and that the consequences of the decisions rendered by a Supreme Court Justice have momentous consequences for the lives of people.

It was with this sense of history and this sense of understanding of the Constitution, Mr. President, that I have asked myself the question: What does the advise and consent function mean? What is necessary for all of us as Senators to be able to carry out that responsibility?

I said to people back in Minnesota that I had made no decision. I said that I wanted to wait until after the Judiciary Committee had a full hearing, and I wanted, Mr. President, that process to be a searching process.

Questions needed to be asked and questions needed to be answered. And it was important to understand Clarence Thomas' philosophy, the kind of framework that he works within, the kind of values that would undergird decisions that he would render.

Important questions needed to be asked about his position about the scope of privacy, about separation of church and State, about first amendment issues, about what constitutes cruel and unjust punishment. All these questions needed to be asked. It needed to be a searching process. And these questions needed to be answered.

I was attracted to Clarence Thomas in one respect before these Judiciary Committee hearings took place. I read just about everything that he wrote. I tried to follow his speeches. Clarence Thomas gave an interview in 1989 in which he said, "It is important that we stick by our principles. That really is important to me, that we don't yield on our principles."

I was attracted to that kind of philosophy. But something happened during the judiciary hearing process. What happened was that Clarence Thomas came in and he said, "The articles that I have written and the speeches that I have given, these were just creatures of the moment; ignore that." He said, "I am stripped like a runner, I am an empty vessel, I have no particular policy preferences."

Mr. President, I am now put in a position as a U.S. Senator where I cannot confirm someone who says they have no views. I cannot give my advice and consent to someone who says that he is an empty vessel. I cannot carry out my constitutional responsibility to do well for people in my State and do well as a U.S. Senator and do well for the people in this country unless I have an understanding of what the nominee stands for.

This has really been a difficult decision for me to make. I have really struggled with this. I have agonized over this question. I wanted us to have a full hearing process. I wanted it to be a searching process. I wanted to find out what would be the philosophy that would undergird the decision of Clarence Thomas.

The questions have not been answered. Mr. President, I would say to you that as a U.S. Senator I am going to be consistent in my standard. I am going to say to any administration, whether that administration is Democrat or whether that administration is Republican, it is simply unacceptable to send a nominee here to the U.S. Senate, coached or whatever, with the basic idea that a nominee just simply does not tell us where that nominee stands on the critical oonstitutional questions of our time. I will not support such a nominee. I do not think, as U.S. Senators, we can carry out our constitutional responsibility unless we know the views of such a nominee.

So I wish today on the floor of the U.S. Senate to say to the people of my State, Minnesota, and to say to the people of the country, I have tried to search and search about this question. I believe this is a thoughtful decision I have made. I know it is a terribly important decision. And the conclusion I have reached is I cannot give my advice and consent to someone who refuses to explain his basic philosophy on the critical constitutional issues of our time. I will not discharge my responsibility as a U.S. Senator by voting yes. Therefore I will note no.

Mr. President, I yield.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BREAUX. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

CAPITAL GAINS

Mr. BREAUX. Mr. President, if it is a fact that Nero fiddled while Rome burned, then it is no less certain that Congress has also fiddled while America has declined.

We talked about recession, but we offer no real solutions. We talk about unemployment, but we only offer the Band-aid of unemployment compensation, rather than cure the illness of no jobs. We talk about lack of competitiveness, but only offer cheerleader rhetoric about "let's be more competitive."

It is time, Mr. President, to put America first and face some facts. The facts are we have record unemployment, we are fighting a recession, our productivity is lagging, more and more businesses are relocating to other countries, and pessimism has replaced optimism as the officiai outlook of American business at a time when a world at peace should be anxiously planning for a brighter future.

A political leader once said:

> The chief problem confronting our economy * * * is its unrealized potential slow growth, under investment, unused capacity and persistent unemployment. The result is lagging wage, salary and profit income, smaller take home pay, insufficient productivity gains, inadequate federal revenues and persistent budget deficits.

Mr. President, while these words are accurate today, they were not spoken today or even this year. These words were spoken by President John F. Kennedy, on January 24, 1963, as he delivered his message to the Congress calling for a reduction in the capital gains tax rate.

It is time for us to look to history and onoe again take the action necessary to get this country moving again. It is time to end the bickering, the finger pointing, the partisan squabbling and for once let us join together in a bipartisan effort. A capital gains tax reduction can and must be a joint effort. When this issue was debated in

ronmental affairs. We will not fully realize that role until our environmental agency is a full-fledged member of the President's Cabinet.

Next June in Rio de Janeiro, the United Nations will convene a world Conference on Environment and Development. By elevating EPA to Cabinet level, this Nation will send a message to the world community on the importance of environmental protection. As Dr. Bruce Karrah of DuPont testified before the Government Affairs Committee: "In international relationships and negotiations, where position and protocol may be especially important, having Cabinet department status should prove very useful, especially because the Secretary will be dealing with his peers from other countries on an equal basis." The United States will not realize its leadership role in world environmental affairs until our environmental agency is a full fledged member of the President's Cabinet.

If this is true in global environmental policy, it is even more true in the domestic environmental policy. EPA is charged with protecting our health and preserving the quality of our natural environment.

From my own experience on the Environment and Public Works Committee, I know that EPA is constantly in battles with other parts of the administration about what level of protection is appropriate. Others in the administration concentrate on the economic consequences of environmental policies but EPA is the advocate for our health and the protection of our lakes and streams.

Many of the solutions to our environmental problems lie beyond the traditional scope of EPA programs. The quality of our air is directly related to energy and transportation policy. The quality of our drinking water is related to land-use decisions. The Federal Government may well be the largest generator of hazardous waste in the Nation. Our environmental future is bound up in the programs and policies of the agencies represented at the Cabinet table. It is time for a Secretary of the Environment to be a full partner at that table. This legislation will ensure that every significant environmental decision made by the executive branch will be debated among equals.

In this administration, the effects of this legislation could be very dramatic. It seeks to ensure that next time the President sends energy or transportation legislation to Congress, the Secretary of the Environment will be advising the President about any adverse effects to the environment caused by his legislation. Currently, the voice of EPA is virtually absent from this debate. On the other hand, the Secretary of Energy—as a member of the Cabinet—was extremely active in forming the President's position on clean air.

As EPA's mission has evolved, the Agency itself has matured. While I don't always agree with EPA's actions, there is no question that the Agency has proven its ability to contribute at the highest level of Government.

The creation of a Bureau of Environmental Statistics to compile data and evaluate the effect of pollutants is essential. In spending our limited resources, we must know which pollutants pose the greatest risk to human health and the environment. This knowledge will tell us which environmental problems to address first.

This legislation demonstrates our commitment to strong environmental programs in the future. The creation of a Department of Environment sends an unequivocal message to all Americans and to the world that the United States places environmental protection among its most important concerns.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

MORNING BUSINESS

Mr. GLENN. Mr. President, I ask unanimous consent there now be a period for morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GLENN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. (Mr. BAUCUS). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Ms. MIKULSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordersd.

Ms. MIKULSKI. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE NOMINATION OF CLARENCE THOMAS

Ms. MIKULSKI. Mr. President, I want to use this time as the Senate begins its weekly deliberations to give my views on the pending nomination of Judge Thomas to the Supreme Court.

Once again we are faced with the solemn task of evaluating a Supreme Court nominee. Each time I face this task I have as three times before in my Senate career viewed this as a matter of great and indeed tremendous responsibility. But we are faced in this body with a serious decision of enormous consequence.

I know of no other decision that is so totally irrevocable and irretrievable and so far-reaching. Once confirmed, a nominee bears no further burden of accountability. He or she will hold that position for a lifetime. That is why for me there must be no doubt whatsoever about a nominee's ability to serve or about his or her absolute unflinching and obvious commitment to the most basic tenets of the Constitution. I refer to the fundamental guarantees of individual rights and equality for all Americans.

In this country we, the people, are dependent upon the Constitution and its interpretation to protect our most basic rights. In that context, the Supreme Court is the final arbiter on decisions that are grave and complicated. Yet we must remember that the Court is a collection of individuals. They are people with their own ideas and their own beliefs as well as initial framework. That is why we in the Senate must look at each one of them with uncompromising scrutiny, and to each nominee I apply the same criteria.

First, is the nominee competent? Second, does the nominee possess the highest personal and professional integrity? Third, will the nominee protect and preserve the core constitutional values and guarantees that are central to our system of government, specifically freedom of speech and religion, equal protection of the law, and the right to privacy?

I hold all nominees to the same criteria without exception and without bias. They are the standards against which I measured Justice Kennedy, Justice Bork, and Justice Souter. You might recall that I voted against Bork and I voted against Justice Souter.

Before I apply them to Judge Thomas, I would like to comment on my previous knowledge of Judge Thomas. As I have moved around the State of Maryland many of my constituents, particularly of African-American background, said "Give the guy a chance. He has done a lot with his life." And I said, you know, I have given Judge Thomas a chance. I voted to put him on the court of appeals, a Federal court of appeals judges, and I do admire what he has done with his life. He is exceptional in two ways. He knew what to do with opportunities that God gave him, and he knew what to do with adversities, and used them to make himself stronger.

Who of us can walk away from the previous week's hearings and all the media coverage without an instant knowledge of the town of Pin Point, GA, and the courageous efforts of Judge Thomas' mother. All of us know

what an exceptional man he is in terms of overcoming the odds that enable people to move up in our society. His personal story is an inspiring one.

However, Mr. President, individual perseverance is not my sole criteria. We are talking about voting for a Supreme Court nominee. Therefore, I looked again at Judge Thomas as I looked at all all Supreme Court nominees, speoifically in terms of demanding constitutional criteria.

First, is he competent? I believe that he is professionally competent. I would not have voted for his nomination to the court of appeals if I did not believe that.

Second, does he possess the highest personal and professional integrity? Certainly Judge Thomas' life story is evidence enough of integrity. This is a man who is where he is today because of his own hard work, the support of a strong and loving family, and an opportunity of structure that was provided for him which he was able to make use of.

Third, will he protect and preserve the core constitutional values and guarantees that are central to our system of government; specifically, I reiterate, freedom of speech and religion, equal protection of the law, and the right of privacy?

I really do not know where he is on these issues, and therein lies the problem. On the two issues of equal protection of the law, and the right of privacy, I have seen little evidence of his commitment—not in his testimony, and certainly not in his work history. During the hours of hearings I was so disappointed to note how evasive Judge Thomas was.

He was either silent or he was evasive on many issues, and when questioned, would say that was a throwaway line.

I am voting for a lifetime appointment to the Supreme Court. I cannot judge whether, when we read somebody's lines, what is a throwaway line and what is not. I am very disturbed about that.

I also took a look at Judge Thomas' work history. As head of the EEOC, Judge Thomas held a position of power and authority. That is the Equal Employment Opportunity Commission. In that position, he could have used the power of his office to help those who were locked out and left behind. But he rarely did that. He showed little concern for older Americans, and even less for the laws designed to protect them.

I was deeply disturbed to find out that he deliberately failed to process 13,000 age discrimination complaints within the time allocated by the law, 13,000 cases of older Americans that he let languish.

The result was that he wreaked serious damage on the opportunities of these older Americans to sue for back pay—the time ran out—or to sue for the opportunity to work. The time ran out on Americans because Judge Thomas was not sweating the details, or did not have the commitment to do it. He had the power to pursue age discrimination cases, and he turned his back on them.

He failed to enforce the law and his Department's own policy on pension rights for workers over 65. That failure cost older workers more than $450 billion in lost pension benefits annually. That hurt people who had worked as hard to get where they were as Judge Thomas worked to get where he is.

Most recently, it has come to light that Judge Thomas drafted an opinion against affirmative action. A woman secured a radio broadcast license from the FCC under their minority preference polioy. Her right to the license was challenged in court and she won the case. The case reached the court of appeals, where Judge Thomas now sits. Judge Thomas drafted the opinion that would deal with this issue, and would overturn her right to use the license on the basis that the preference program was illegal. His opinion has not yet been released.

Regardless about how one thinks about affirmative action, and there is plenty of room for debate and difference, he is, in the weeks of his confirmation hearing, withholding an opinion that would give us insight into his opinionmaking and judicial logic and judicial criteria.

Some say he did not want the Senate to see it. In the hearings, Judge Thomas said he had no problems with preference programs. It is hard to tell what his real feelings are on this matter.

Why did he withhold the opinion? Is it his own decision, and did he not want the Senate to hear it, so therefore, we will read about it years later while he is on the Supreme Court? Or was it the decision of his handlers? Mr. President, handlers, to be a Supreme Court nominee? Handlers are what you do for boxers; it is not what you do for Supreme Court nominees.

I do not know, and I really would hope that someone who has shown such strength of character to get where he was would not need people handling him to become the Supreme Court nominee. This is a man who demonstrated a lack of commitment for the very laws which he would be called upon to uphold, and a lack of compassion for the very people who will need his protection the most.

Finally, throughout hours of testimony, Judge Thomas refused repeatedly to discuss whether, and how, the Constitution protects women in this country. To find his beliefs, we had to turn to the body of his writings. There we find antagonism toward a woman's fundamental right to privacy; specifically, her right to choose an abortion in the circumstances of her life, her health, or as a victim of a crime, which would take her to that decision.

At one time, Judge Thomas was an active member of a White House working group on the family. Part of their job was to issue a final report, and they did. It was explicitly critical of the Supreme Court's decisions affirming the right to privacy. Specifically, it was very critical of Roe versus Wade.

Judge Thomas signed the report, but when asked what was his thinking when he signed the report, he said he never read it. He put his name on a White House report and never bothered to read it. Will he put his name on Supreme Court opinions and never bother to read those?

Finally, despite repeated questioning, Judge Thomas claimed he never discussed Roe versus Wade; not as a law student, not as a young lawyer. He was in law school when Roe versus Wade was decided.

Mr. President, you are a lawyer. You know that when cases are decided in the Court, particularly of such wide-ranging impact, law students set their strategies, and as if they are Supreme Court Justices, they tell you what they would think and do, and tell you what cases they looked at as precedent. He said he never discussed it.

I cannot believe that an appeals court judge never once discussed the issue of abortion. He spoke extensively on Griswold, that old Connecticut case that prohibited birth control information from being disseminated, which was struck down. If one has an opinion on Griswold and not Roe versus Wade, I find that hard to believe.

Most of all, I find his evasion unacceptable. I do not know where he is or where he stands on these issues, on the most basic issues of equal protection of the law and the fundamental right to privacy.

Therefore, regrettably, I am casting my vote against Judge Thomas. When my name is called in the U.S. Senate for his nomination, I will vote "no."

I think that the American people are entitled to know what their Supreme Court Justices believe about fundamental human rights. It is not acceptable for a nominee to hedge, or deny, or cloud the issues. What he believes is what he is, and that will shape the Court for the next 40 years, if he is confirmed.

I know how hard it is to get somewhere in this society. I stand here as the only Democratic woman in the U.S. Senate. I share Judge Thomas' struggle. But I do not share his reluctance to commit himself to defend equal protection of the law and the right to privacy.

Every day in this body, we work hard to expand rights and opportunities, not to restrict them. Every day, we are on the line to reveal our deepest beliefs about equality, privacy, and freedom.

I believe that we deserve the same from our Supreme Court nominees. I believe we have the right to know

where they stand, and the right to know that they will take this Nation forward, and not hold it back. I believe that we have the right to know, and we have the responsibility to vote no on those who prohibit us from knowing where they stand.

So, Mr. President, that summarizes my thinking on the topic, and I will look forward to hearing the additional debate of my colleagues in the Senate.

I yield the floor.

IN HONOR OF KATIE FROHNMAYER

Mr. HATFIELD. Mr. President, it is with great sadness that I rise today to honor the life of a young friend from Oregon. Oregon's Attorney General Dave Frohnmayer's 12-year-old daughter died last Thursday of complications to a rare blood disease called Fanconi anemia. Katie Frohnmayer had courageously battled this disease for years.

Katie was born November 18, 1978, the third of five children of Dave and Lynn Frohnmayer. In 1983, Katie's older sister, Kirsten, was diagnosed with this dreaded disease.

Fanconi anemia is a rare and usually fatal disease which affects 2,000 Americans. The disease seems to strike each patient differently, but symptoms can include birth defects, damage to the heart and brain, retardation of growth, and other disfiguring effects. With most victims, the disease eventually attacks their bone marrow and destroys their ability to produce blood. The only known cure for the disease is a bone marrow transplant, and donore are very difficult to find. It was the search for a marrow donor for Kirsten which led to a second shock to the Frohnmayer family. In early 1984, the family learned that Katie also had the disease.

The Frohnmayer family searched vigorously for a donor for both girls, but the search was made even more difficult by the rare tissue type the girls had inherited. Hundreds of distant relatives were tested from as far away as Nova Scotia, but there were no tissue matches.

Researchers do not know what causes the disease, but they do know it is passed on much like cystic fibrosis. It is carried on a recessive gene and can lie dormant for generations. The disease is handed down when two latent carriers both pass the talnted gene to their child.

Mr. President, I oannot praise enough the dauntless effort of the Frohnmayers in their search for bone marrow donors for their children and their interest in helping other families in need of marrow donors. During the last decade, the couple has helped found the National Marrow Donor Program—a registry of potential bone marrow donors, founded a support group for families, and raised $500,000 for research.

This Nation has made great progress over the last several years in enlisting volunteer bone marrow donors. Bone marrow transplants, particularly from unrelated donors, are a relatively new medical therapy for patients with fatal blood diseases which offer hope to hundreds of afflicted individuals and their families each year. The National Marrow Donor Program registry, currently headed by my good friend and colleague Admiral Zumwalt, has grown from just over 30,000 volunteers in January 1989 to over 300,000 in 1991. As a result, more than 300 bone marrow transplantations came from registry donors in the past year, an increase of more than 50 percent over the previous year. Since the Congress transferred the administration of the bone marrow registry from the Department of Defense to the National Heart Lung and Blood Institute in 1989, Federal support has risen from approximately $3,000,000 to nearly $12,000,000 over a 3-year period.

Mr. President, this progress would not have been possible without the leadership and advocacy of individuals and families, like the Frohnmayers. Through their partnership with blood bank organizations, success has been achieved in expanding the number of donors dramatically, increasing individuals receiving bone marrow transplants and broadening research support. The Frohnmayer's were active participants in this effort. Their tireless commitment to this battle is a strong tribute to their dedication both to their daughters Katie and Kirsten and to the thousands of others afflicted with fatal blood diseases. Our only regret is that Katie could not be saved.

As an advocate for medical research in all diseases from the most orphan to the most politically popular, I could not let today pass without expressing my supreme gratitude to the Frohnmayer family and especially to Katie. We must celebrate Katie's life as God's precious gift to us. Her courage is a source of inspiration and strength to all who suffer from illness or disease and to those who love them.

TRIBUTE TO JOHN O. KIZER

Mr. HOLLINGS. Mr. President, I rise today to pay my respects to Mr. John O. Kizer, a distinguished West Virginian, who has volunteered untold hours of his professional and personal time to be the dominate presence for the enforcement of legal ethics in West Virginia. The West Virginia University College of Law has recognized his contribution to public service by awarding him with the college's Special Achievement Award.

For over 20 years, he has been the conscience of the West Virginia bar. Not only has he donated countless hours of his time to oreating and enforcing the high standards to which attorneys are held, he has also led by example. If all lawyers gave back as much to their communities as John Kizer, there would be no lawyer jokes.

Mr. Kizer has practiced corporate law for 55 years in Charleston, WVA. He is former chairman of the State bar Legal Ethics Committee and continues as a leading member. He is a tribute not only to his profession but also to the community of Charleston. He is a former president of the Charleston Kiwanis and of the Charleston Children's Museum. Currently, he served as a direotor emeritus of the Charleston National Bank and is an elder at his church, First Presbyterian. Perhaps his most notable accomplishment is that he is the grandfather of an outstanding member of my staff, Caroline Ball Stinebower.

West Virginia University College of Law bestows the Special Achievement Award to an alumnus who has made an outstanding contribution of contemporary significance to public service, the legal profession or the development of law or legal institutions. John Kizer is the epitome of these qualifications. He has devoted a lifetime to the unenviable task of holding his colleagues to the highest standards of their profession. As a lawyer myself, I know how difficult it can be to point out shortcomings to a group that has always thought of themselves as the best. John Kizer has done it with intelligence and grace for these many years.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,389th day that Terry Anderson has been held captive in Lebanon.

ENVIRONMENTAL EDUCATION IN FROST VALLEY

Mr. MOYNIHAN. Mr. President, I recently learned from my friend Louis Resnick of Ellenville, NY, that a most impressive solid waste recycling program has been introduced at the century-old Frost Valley YMCA campsite in New York State's Ulster County. This new Resource Management Center is in keeping with the Frost Valley YMCA's tradition of meaningful communal service. Over 28,000 New Yorkers a year benefit from the YMCA's innovative programs under the skilled leadership of D. Halbe Brown. Mr. President, I ask unanimous consent that a description of this worthy project be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

make an individual choose between the job they need and the child they love when that child has some serious medical emergency. We know the change in the work force has brought more and more families into the work force.

This is minimal legislation to deal with what is a very real problem in the work force in the United States in 1991. And it is appalling to me, Mr. President, that there are those in this body that refuse to even permit the Senate of the United States to address this issue.

The American people want action on this issue and, nonetheless, there is a dedicated group of Senators that will virtually block the attempt to debate this issue on the merits. The families in this oountry should take note when the bell tolls on that issue later this morning.

I commend the majority leader for giving us an opportunity to express our view on this extremely important piece of legislation.

I yield whatever time has been designated to me to the Senator from Washington.

Mr. ADAMS. Mr. President, as the new world order develops, education should be our highest national priority, as stated by the chairman of the committee, Senator KENNEDY. The Democrats have presented a comprehensive education agenda from early childhood through higher education. It builds on a legacy of making education a top priority for all Americans, with special emphasis on disadvantaged children, children that may have been disadvantaged for a whole series of reasons, by our society.

The President, on the other hand, has submitted an agenda of untested programs that would receive millions of dollars that would otherwise go to the public schools. In my State, the New American Schools Program would ignore more than 99 percent of the public schools.

The Bush plan builds on a Republican legacy of failing to approve and provide resources for important education programs like Head Start that have proved successful. What the Republican program does is say that those receiving a good eduoation will be improved, but those disadvantaged by any one of many factors in America's society will receive iess, and the average child in an American public school will not be helped at all.

America's ohildren and youth need an education agenda that will ensure the success of every child to that child's fullest potential. We do not want to have an elitist educational system for the lucky few. We can meet the national education goals for every child, reach their potential, through the Democratio education agenda, and I hope we will adopt it.

The ACTING PRESIDENT pro tempore. The Senator from Washington is recognized.

Mr. ADAMS. I thank the Chair.

(The remarks of Mr. ADAMS pertaining to the introduction of S. 1777 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. SHELBY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

NOMINATION OF JUDGE CLARENCE THOMAS TO BE AN ASSOCIATE JUSTICE OF THE U.S. SUPREME COURT

Mr. SHELBY. Mr. President, I do not take my advise and consent function lightly. I believe that one of the most important votes any Senator casts is either for or against a Supreme Court nominee. During my tenure in the U.S. Senate, I have supported two consecutive Supreme Court nominees, Justice Kennedy and Souter, both nominated by Republican administrations. I want Supreme Court Justices who will interpret the Constitution and not attempt to legislate or carry out personal agendas from the bench.

The nomination of Judge Clarence Thomas to the Supreme Court is truly a historic occasion. If confirmed, Clarence Thomas would be only the second black American to serve on our Nation's highest court. I firmly believe that a nominee should be confirmed based on legal qualifications and judicial temperament, not the color of his or her skin.

The journey for Judge Thomas from his childhood home in Pin Point, GA, to his nomination to the Supreme Court has been a long and difficult one. Growing up in an era of discrimination and the worst of the Jim Crow segregation laws, Clarence Thomas knows what it feels like to be judged by the color of his skin and not by his personal qualifications. That he was able to overcome these obstacles and better himself through education and hard work is a testament to the kind of character that Clarence Thomas possesses.

Attending Holy Cross College and Yale Law School, Clarence Thomas went on to distinguish himself in the Missouri attorney general's office, as a Senate staffer, in the Department of Education, at the Equal Employment Opportunity Commission, and finally, as a judge serving on the U.S. Court of Appeals for the District of Columbia.

There is no doubt in my mind that Judge Thomas' life and work experiences would serve him well on the Supreme Court. I especially believe that Judge Thomas brings a unique perspective—that of a minority in America—that would better enable the Supreme Court to ensure that the rights and freedoms of all Americans are preserved and strengthened.

In reaching a decision on Judge Thomas' nomination, I am reminded of Alabama's last Supreme Court Justice, Hugo Black, one of the Supreme Court's greatest Justices. Justice Black was a member of the Ku Klux Klan as a young man and many people felt he did not deserve to sit on the Supreme Court because of that membership. However, the Senate supported his nomination to the Supreme Court and on the Supreme Court, Justice Black was instrumental in preserving and protecting individual rights for all Americans.

If the history of Justice Black teaches us anything, it teaches us that people are capable of change, of growth, of greater understanding.

In supporting the nomination of Judge Thomas, I cannot prediot with certainty how he will rule on speciflo issues—no man could do this save Clarence Thomas himself. I do believe, however, that he will be a fair and impartial arbiter of the U.S. Constitution. And that, above all else, convinced me that Clarence Thomas is not only qualified to serve, but would be a welcome addition to the Supreme Court of the United States.

Mr. President, I intend to vote in favor of Judge Thomas' nomination to the Supreme Court and I urge my colleagues to do the same.

The PRESIDING OFFICER (Mr. ADAMS). The Senator from Alabama yields the floor.

The Senator from New Mexico.

NATIONAL GOALS PANEL REPORT

Mr. BINGAMAN. Mr. President, the National Goals Panel issued their first annual report card yesterday, and I thought I would take just a few minutes to oomment on that and give my views on some of the contributions they reached there.

First, I begin by complimenting Gov. Roy Romer, from Colorado, for his personal leadership in getting this report prepared. This was not an easy job. He faces heavy opposition as he attempted to produce a credible report card, and this report card, I would very early on say, is a significant improvement over the old so-called wall chart which we have seen for many years now issued by the Department of Education.

The final report did not address, in my view, some of the essential relationships that we need to understand in order to improve education. It did not call for analysis, but this is not because Governor Romer did not try. The final report does not address the long-range commitment or plan or create any vision for how we are to help improve achievement. But, again, this was not because Governor Romer did not try. I, for one, am very complimentary of his tenacity, his unflagging energy and efforts to move the Nation's education commitment in investment and reform of education forward.

The education goals report will heighten the public debate about edu-

learn how to build upon them, see those less fortunate and learn how to help them build their lives. And through education we learn just how precious our democracy is, how frail and fragile it can be, how much it means to oppressed peoples everywhere, and how we cannot and should not retreat from leadership that is as strong in waging peace as it is in the conduct of war. As I have said many, many times, it is in the education of our people that we find our strength and our health.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. MITCHELL. Mr. President, for the information of Members of the Senate, we had intended that there be a cloture vote on the motion to proceed to the family leave bill this morning. For a variety of reasons that has been delayed and discussions are continuing on the bill in an attempt to determine the best and most appropriate method to proceed with respect to consideration of the matter.

We are now going to have a meeting which we anticipate will take about 20 minutes with the distinguished assistant Republican leader and interested Senators on both sides.

RECESS UNTIL 4:11 P.M.

Mr. MITCHELL. Acoordingly, I ask unanimous consent that the Senate now stand in recess until the hour of 4:10 p.m.

There being no objection, the Senate, at 3:46 p.m, recessed until 4:11 p.m; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. FORD].

The PRESIDING OFFICER (Ms. MIKULSKI). The Senator from Kentucky, exercising his prerogative as a Senator from Kentucky, suggests the absence of a quorum, and the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BURNS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BURNS. Madam President, I also ask unanimous consent that I may proceed as if in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, the Senator may proceed as if in morning business.

The Senator from Montana is recognized.

Mr. BURNS. I thank the Chair.

(The remarks of Mr. BURNS pertaining to the introduction of S. 1789 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. BURNS. Madam President, I also rise today in strong support of Clarence Thomas to be an Associate Justice to the Supreme Court of the United States.

Ever since I joined this body back in 1989, my first session here, we continued to look for those people who will serve this great country for many reasons. And as I listened to the hearings and observed this man in his answers as a result of the questioning from the Judiciary Committee, there was one thing, very, very evident about this great American. He has seen first hand the diversity of the American experiment, first hand. That is important in this town.

Sometimes we get critical of ourselves and about this city and the way Congress works and the way the administration works and, yes, the way the legislature works, both Houses. But we look for those people who have had hands-on experience, who have sort of come up the hard way, who not only have a formal education, but also graduated with high honors from the university of hard knocks.

He has not only seen, but he has been a part of one of the most historical times in American history, a turbulent time, a time when America had to look inside its own soul to hold itself together.

And from those times, going on to obtain a formal education which most would agree, in fact all of us agree, is of the utmost importance. But when you couple that formal education with the practical experience of life, and all that it teaches, it becomes alive with purpose.

Judge Thomas not only has approached all of his challenges armed with a strong tool of that formal education, but he has the good, old common horse sense to implement it. He has shown to me that inside this man lives compassion for the American people. Only life itself can teach that. He has learned that lesson very, very well.

Here is a man that has been appointed by the President to the highest court in the land. He has been confirmed by this body no less than four times without objection.

On October 7, a new session of the Supreme Court goes to work. He should be seated on that panel so they can get on with the work of this country.

I urge my colleagues to support this man to be a Supreme Court Justice.

Madam President, I thank you.

I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

(Mr. KOHL assumed the chair.)

Mr. ROTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROTH. Mr. President, I ask unanimous consent I be permitted to speak as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

GEORGETOWN BICENTENNIAL

Mr. ROTH. Mr. President, I am proud to pay tribute to a very special place, Georgetown, DE, as we approach the day of its bicentennial. On October 26, 1991, the people of Georgetown will celebrate 200 years of a rich Delaware history.

Over the course of two centuries, the Delawareans who lived and worked in this community built a solid, longlasting, and proud heritage. But they have done more than that.

With vision and intelligence, they have built a town which continues to grow and meet the challenges of the late 20th century. If you walk through the streets of Georgetown, you will see the old and the new working together in an exciting way.

The historic buildings and Victorian houses speak of the past, but the people of this town are very much of the present and the future. Georgetown is expanding and improving an already healthy economic base.

The people of Georgetown exemplify what is best about Hometown, America: They are good, hard-working citizens who care about their community, and who think about the challenges we must face as we approach a new century.

Perhaps there is no better example of how the people of Georgetown, DE, have gracefully combined the past and the present than the celebration of what is known as "Return Day." This is an old tradition that began as far back as 1792.

In those days, the citizens of Sussex County traveled to the county seat of Georgetown to cast their votes on election day. Then, 2 days later, they returned to hear the results. Return Day became a day of celebration and festivity in Georgetown over the years. It was an opportunity for the people to join with their elected representatives and celebrate the victories of democracy. But, importantly, it was also a time for campaign winners and losers to join together in friendship and mutual support.

Today, even though our electronic age has sped up the reporting of elec-

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Mr. President, I ask unanimous consent to proceed as in morning business for up to 5 minutes.

The PRESIDING OFFICER. Without objeotion, it is so ordered.

Mr. GRAHAM. I thank the Chair.

CONDEMNATION OF THE VIOLENCE IN HAITI

Mr. GRAHAM. Mr. President, the people of Haiti and the government they freely elected to office just last December are under attack this evening by that country's military.

President Jean-Bertrand Aristide, voted into office by more than 70 percent of electorate, fled for his life early this morning and is in Venezuela. Members of his government have been arrested. More than 130 civilians are dead, shot down by the marauding army that continues to terrorize the citizens of Haiti's capital, Port-au-Prince.

Mr. President, the election that took place in Haiti last December was truly a momentous event. It was the first free, fair and open election in the almost 200-year history of the nation of Haiti. The first. It must not be the last.

More than 1,000 international observers were on hand to observe the voting. The United Nations provided security assistance. Haitians turned out in large numbers. Ballot counting went on through the night and into the next day. President Aristide received almost 70 percent of the vote.

The election, unmarred by violence, was a far cry from the blood bath the world witnessed in 1987 when Haitians tried to vote following the ouster of President-for-life Jean Claude Duvalier.

Unfortunately, tragically after 8 months of democratic civilian rule, we had another bloodbath on our hands in Haiti. It is time we stated categorically that we are one with the Haitian people in their fight for democracy.

Mr. President, it is my intention before today's business of the Senate is conoluded to offer a resolution expressing the support of the United States Senate for democracy in Haiti, expressing our abhorrence at the return of military authoritarian rule in that country.

It is my intention to ask that the United States take what action it can unilaterally undertake. And I am pleased, Mr. President, that the President of the United States has already announced his intention to terminate all economic and military ald to Haiti as long as it is under the control of the military junta.

The United States also has the opportunity to rally the international community. Last year the Organization of American States at its meeting in Santiago, Chile, adopted what was a first for that hemispheric organization. That is a commitment that in the event a democratically elected government was threatened, as has now occurred in Haiti, the hemispheric community of democratic nations would immediately come together and take such action as was deemed appropriate to restore that democratic government. There will be, I hope, in the next few hours or, if not, days a meeting of the foreign ministers of the Organization of American States' nations for precisely this purpose.

The proposal which I will shortly submit oommends the OAS for that activity and offers the full support of the United States for this international effort toward the restoration of a democratic government in Haiti.

Mr. President, it is an appalling circumstance that so close to our Nation's shores, in a country which has played at times a critical role in the history of our own country's struggle for the preservation of freedom and democracy, that nation should see the flickering flame of democracy be crushed after such a short period; that that nation should again be subjected to the terror and violence that has been too much a part of its history.

It is my hope, Mr. President, that our Nation and other democracies in this hemisphere will see this for what it is, a direct challenge to the will of the people of Haiti in their desire to govern themselves and to restore basic human rights, and that we will with our other allies in this hemisphere take appropriate action to see that this dark shadow of authoritarian rule is not once again inflicted upon the people of Haiti.

Thank you, Mr. President.

The PRESIDING OFFICER. Does the Senator from Florida note the absence of a quorum?

Mr. GRAHAM. I suggest the absence of a quorum, Mr. President.

The PRESIDING OFFICER. The clerk will call the role.

The bill clerk proceeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, I ask unanimous consent that I may be allowed to proceed as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONDEMNING THE MILITARY COUP IN HAITI

Mr. DODD. Mr. President, I rise this evening to speak in support of the pending resolution offered by the distinguished Senator from Florida [Mr. GRAHAM] and others. I ask unanimous oonsent that I be added as a cosponsor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DODD. Mr. President, yesterday, the expressed will of the Haitian people was thwarted by the illegal ouster of the duly elected President of Haiti, Jean-Bertrand Aristide. The Haitian military has perpetrated an outrageous political crime against President Aristide and the Haitian people. This act deserves the outright and unqualified condemnation of the people of Haiti, the people of the United States, and the people of the entire community of nations.

Mr. President, a little over 1 month ago, the hardliners in Moscow were forced to back down from their efforts to turn back the tide of democracy sweeping through the Republics of the Soviet Union. They were forced to respect the democratic aspirations of the Soviet people. I hope that the generals in Port-au-Prince will be forced to take a similar course. The generals must understand, or be made to understand that the international community will not permit suoh petty acts of tyranny to stand in the way of the aspirations of the Haitian people.

With one voice the international community must make clear to the Haitian military that the only satisfactory resolution of this matter is the restoration of the government of President Aristide. The Organization of American States, which is shortly to convene an emergency meeting to address this crisis, must speak and act forcefully to renounce this illegal act and to take collective action to reverse it. Clearly the Haitian people, who have struggled so long and hard to see their aspirations of a democratio Haiti, deserve no less.

I call upon President Bush, in consultation with other governments throughout the hemisphere and elsewhere, to do all that is possible to work toward that outcome, and I urge my colleagues to support the resolution before us as an endorsement of those efforts.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that I may be allowed to proceed with a statement in support of the nomination of Clarence Thomas to the U.S. Supreme Court.

The PRESIDING OFFICER. The Senator may proceed.

Mr. MURKOWSKI. I thank the Chair.

THE NOMINATION OF CLARENCE THOMAS TO THE SUPREME COURT

Mr. MURKOWSKI. Mr. President, I rise today to express my strong support

for the President's nomination of Judge Clarence Thomas to succeed retiring Supreme Court Justice Thurgood Marshall.

After the President nominated Judge Thomas, I carefully reviewed his professional and academic background and qualifications to be an Associate Justice. I also had the opportunity to meet with him to discuss his nomination. I came away from this experience not only confident that Judge Thomas will be a valuable addition to the Court, but also impressed with a man whose life, in many ways, typifies the ideal of the American dream.

Drawing upon the values instilled in him by his family, Judge Thomas has succeeded, in no small part, because of his belief in the value of hard work, the inherent equality of all people, and the importance of self-reliance. The distance he has traveled from his humble beginnings in Pin Point, GA, to Holy Cross College and Yale Law School and now his nomination to the highest court in our land, has been marked by determination, hard work, and commitment to public service. I would expect Judge Thomas' tenure on the Court to be as exemplary.

Throughout the extensive hearings conducted by the Senate Judiciary Committee, Judge Thomas has demonstrated that he is well-versed in the law and that he possesses the intellectual capacity necessary to rule on a variety of complex issues. I am confident that his academic background and professional experience have sufficiently prepared him to serve as an associate justice. I am equally convinced that his decisions on the Court will be tempered by life experiences that make him sensitive to the impact of his decisions on parties before the Court.

There has been a great deal of emphasis in the Judiciary Committee hearings on pinning down Judge Thomas' philosophy on particular issues which may come before the Court. A more appropriate standard for reviewing his qualifications is that standard articulated by the American Bar Association in making its determination that a candidate is "qualified." For a nominee to be judged as "qualified" the ABA requires that the nominee "have outstanding legal ability and wide experience and meet the highest standards of integrity, judioial temperament, and professional competence." Judge Clarence Thomas clearly meets that standard.

I urge my colleagues to support the confirmation of Clarence Thomas to be an Associate Justice of the Supreme Court.

THE SCHEDULE

Mr. MURKOWSKI. Mr. President, one more item since I see the majority leader is on the floor, if I might just have his attention very briefly, and direct my comments to the majority leader.

Mr. President, if I may have the attention of the majority leader for a brief moment, I understand that there has been an effort to reach an agreement concerning the remainder of the schedule, and obviously we operate by the majority rule in the sense of trying to accommodate as many Members as possible. But in view of the fact that there was some indication, at least, that we might have an uninterrupted period of time over the Columbus Day recess, I made certain plans and commitments. I have a Federal judge to meet and they are having an affair in Fairbanks on Monday, and, as a consequence, I feel that I must attend. But on the other hand, I must be here for the Thomas vote if indeed that does occur, as I understand might be proposed, sometime Tuesday.

It is not that I wish my colleagues who live a short distance in an afterlife to have the experience that I have in traveling to make that vote and back to Alaska, about 20,000 miles by the time I would go up and meet the commitments, come back, and then leave again and spend some 56 hours in the air over a period of 2 days.

It seems to me there ought to be some other way to try to keep the commitments that had not been committed in the spirit they could not be ohanged, but for those of us who live in Hawaii, live on the west coast, and other long-distance areas, it is inconvenient, to say the least.

I understand the leader has many problems and many people to try to meet their concerns, but it is indeed unfortunate that I am looking at 20,000 miles in 2 days to meet commitments I have made some time ago. I wanted to make that known to my colleagues because I think, as we address the quality of life here, we begin pushing it particularly for those of us who live that great distance. If I had a nonstop from National Airport to Atlanta or St. Louis, I would feel perhape a little differently, but contemplating that type of travel I feel a little crusty, I might say. I apologize to the majority leader, but I wanted to make my point known.

Mr. MITCHELL. Mr. President, I thank the Senator for his comments and his courtesy. I am very sympathetic to the Senator's needs, which is one reason why the distinguished Republican leader and I made suoh an effort to accommodate the Senator from Alaska and other Western Senators on so many occasions in the past.

With respect to the Columbus Day recess, I would simply note that when the matter was discussed here on the floor of the Senate by Senator DOLE and myself, I stated explicitly that additional time for that period would be forthcoming provided the Senate completed aotion on certain measures prior to that. I was then asked the precise question by the distinguished junior Senator from Mississippi, what happens if the Senate has not completed action on those measures by October 4? My answer was the Senate will be in session on October 7 and 8 and 9, until they do.

I might say to the Senator that the distinguished senior Senator from Mississippi then expressed his opinion on the subject in which he made known his criticism of the whole approach of trying to do it in this manner, a point of view which I respect and accept. The reason we now have a hangup is trying to complete action on the Thomas nomination. I am trying to accommodate the President, the distinguished Republican leader, and the Senator from Missouri. The Senator from Alaska will get no quarrel from me if he would say the Senate should go out on Friday, take a week and come back and do the Thomas nomination at some later time. I am trying to strike a fair balance in the interest of all concerned in trying to accommodate the schedules of 100 Senators, each of whom has different interests and needs. I am very sympathetic with the tremendous travel problems that the Senators from Hawaii and Alaska have. We trisd very hard to try to accommodate the concerns in this session and the prior session. We will continue to do so.

Mr. MURKOWSKI. I thank the majority leader. It was my understanding that possibly Friday, or Saturday at the latest, 48 hours would expire so we could have taken the Thomas matter up for a vote either Friday or Saturday as opposed to carrying it over to next week. But unless I am corrected on that, I believe there was objection by one Member.

Mr. MITCHELL. Let us not have any misunderstanding on the reoord. Under the rules, the Senate, with unanimous consent, could not take up the nomination until 48 hours after the report is printed and available to all Senators. The report is expected to be printed and available for all Senators tomorrow during the day. I do not know the time. Therefore, we could not even take it up until sometime during the day on Friday. Given the importance of the nomination, I think it is a reasonable request to suggest that there be a period of 3 or 4 days to consider it.

If we can get to this unanimous-consent request, which I am trying to get to, I am going to propose waiving the rule and bring it up on Thursday prior to the time when it would otherwise be available to be brought up so that we can begin discussion and have a full 4-day period for debate on it and then everybody have the opportunity to express themselves and have a vote on it at a reasonable time.

Mr. MURKOWSKI. Mr. President, I assume the majority leaders would need unanimous consent to get that.

Central American coordination mechanism composed of representatives from government, labor, private enterprise, academia, and other nongovernmental sectors in Central America. The CADCC will provide a forum for dialog, consensus building, and coordination of Central American participation in regional and global initiatives. It will emphasize the essential linkage of participatory democracy and sustained economic development in Central America.

SIECA will manage the grant on behalf and under the guidance of the new CADCC. The first working meetings of the CADCC are scheduled for November 1991 in Managua, Nicaragua.

Mr. President, in the last few years, the administration has made assisting development in Central America more of a priority and has consistently supported recommendations of the International Commission and the creation of the CADCC. Much credit is due to the leadership of the Agency for International Development under the Assistant Administrator for the Latin America and Caribbean Bureau, Jim Michel. I am pleased to say that the hard work of the Commissioners, the cooperation of the five Central American Ambassadors, and the support of the administration have brought this plan to fruition.

IN SUPPORT OF THE NOMINATION OF CLARENCE THOMAS

Mr. DIXON. Mr. President, I rise today to announce my intention to vote for Clarence Thomas to be an Associate Justice of the Supreme Court.

I base my decision on a careful review of the Senate Judiciary Committee hearings, Judge Thomas' statements, and my own standards for Supreme Court nominees.

When new Chief Justice Rehnquist was elevated to the post of Chief Justice, I said on this floor that there were three tests that I would use to guide my consideration of a Supreme Court appointment: First, the nominee's intellectual capacity; second, his background and tralning; and third, integrity and reputation. I also stated that opposing the political or judicial philosophy of a President's nominee is not generally a basis for a vote against that nominee.

It is upon that previously enunciated criteria, and my conolusion that Judge Thomas sufficiently meets such criteria, that I have decided that he is qualified to serve as an Associate Justice of the Supreme Court.

Mr. President, I have voted for many of the President's nominees. I have voted in favor of the nominations of Chief Justice Rehnquist, Sandra Day O'Connor, Antonin Scalia, Anthony Kennedy, and David Souter. I firmly believe the President is entitled to nominate individuals who share his basic philosophy.

Judge Thomas' philosophy has been a subject of great discussion. I believe just as Judge Thomas' thoughts on some positions have evolved to be well formed, further evolution on other issues is inevitable. Some Justices on the current Court appear to have fairly rigid philosophies or ideologies. Judge Thomas does not appear to fall into that category. That suggests he may well surprise some of his opponents.

The American Bar Association, upon review of his legal career and writings, has found Judge Thomas to be "qualified."

Judge Thomas' educational background is solid. He appears to have been a good student at outstanding schools.

Usually, a nominee has at least one long suit that stands out from the others. Clearly, Judge Thomas' long suit is his life story, which is oompelling, moving, and endearing. The hard-scrabble beginnings in Pin Point, GA; his successful struggle out of poverty; the incidents of racism directed at his family and him—have constructed a most unique background for someone to be on the Supreme Court. The life experiences are not determinative, but they do serve as an important factor in the overall consideration of this nominee.

Judge Thomas has had the enormous benefit of learning from, and working with, one of the outstanding Members of this body, my distinguished colleague from Missouri, JACK DANFORTH. Senator DANFORTH's support and leadership on this nomination is a personal testimony to Judge Thomas' character.

Mr. President, I will vote "aye" for the nomination of Judge Thomas to be an Associate Justice of the U.S. Supreme Court.

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,390th day that Terry Anderson has been held captive in Lebanon.

S. 1010—FLIGHT ATTENDANT DUTY TIME ACT

Mr. WARNER. Mr. President, I rise today giving my support to Senate bill S. 1010, the Flight Attendant Duty Time Act, introduced by my colleague Senator INOUYE. In 1952, the Federal Aviation Administration [FAA] required commercial air carriers to have personnel on board to assist passengers in case of an emergency. Passengers depend on flight attendants to direct them in evacuating an aircraft after an emergency landing; to be the inflight fire department and onboard security officer; to handle disruptive passengers; and to assist with medical emergencies such as heart attacks or unexpected births. The FAA and the carriers have largely insured that flight attendants are thoroughly trained to perform these duties, but the FAA has refused to insure that flight attendants are well rested enough to maintain alertness, judgment and the ability to perform physical emergency tasks.

In this Congress, my colleague Senator INOUYE introduced the Flight Attendant Duty Time Act, S. 1010 to correct this unacceptable state of affairs. This legislation is a straightforward proposal which would establish maximum duty times and minimum rest periods for flight attendants. The maximum duty time on domestic flights would be 14 hours with 10 hours rest, and the maximum duty time for international flights wouid be 16 hours with 12 hours minimum rest.

This proposal follows nearly 2 decades of efforts to secure these changes through the regulatory process. Flight attendants began to pursue limits on the hours a carrier could requirs them to work 20 years ago, and received a promise from the FAA that it would issue duty time limitations by the end of 1978. The rule was never published and neither was the one the FAA promised to issue in August, 1980.

Some might say this is an issue that should be left to the negotiations between management and employees. Generally, I agree that most matters between employers and workers should be handled in the collective bargaining process. Safety, however, is not a topic that should be put on the bargaining table. The Federal Government has a responsibility to insure the health and safety of the flying public and flight attendants alike.

I urge my fellow Members of the Senate to join with me in cosponsoring this long overdue legislation needed to place flight attendants on par with all other safety-sensitive transportation employees.

RESOLUTION HELD AT THE DESK

Mr. MITCHELL. Mr. President, I ask unanimous consent that Senate resolution 186, a resolution on Haiti submitted earlier today by Senator GRAHAM, be held at the desk.

The PRESIDING OFFICER. Without objection, it is so ordered.

HOUSE JOINT RESOLUTION 305, DESIGNATING "COUNTRY MUSIC MONTH," AND SENATE JOINT RESOLUTION 131, DESIGNATING "NATIONAL DOWN SYNDROME MONTH"

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged en bloc from further consideration of the following: House Joint Resolution 305, designat-

has never changed. Now is the time for taking the broad perspective, the long look. Now is the time for putting aside the narrow motives of political campaigns, of posturing for advantage on the margin.

I have commended President Bush in the past for seeking to tackle the intractable problems of a peaceful settlement in the Middle East. The emotions and suspicions run through a deep canyon in the Middle East, and the bridging work is horrendously difficult. This is certainly a time for us to give the President our undivided support in his efforts to construct that bridge. The timing is good, and is more suitable now than it has been for many years. So I congratulate the President for his efforts to bring all the parties to the peace table—all the parties to the peace table—to act as a good-faith broker, for helping establish a fair negotiation, without loading the dice to any party's advantage. Therefore I have supported his effort to delay for a very short time consideration of any major new program of largess for Israel. I have also opposed new arms sales to Arab states for the time being. I think the President is taking the broad view, and I am sure that he needs all the mandate and support from us that he can get. The various parties to the differences in the Middle East watch political events in the United States with a fixation. They look for signs that the United States is playing a role of statesman. Only great statesmanship will help transform the Middle East.

That is the right course. Let us support this President in his efforts to maximize on the military victory that was achieved in the Middle East. Let us give this President the tools which he needs to seek lasting peace in the Mideast. That is what is in the best long-term interest of our friends in the region. Now is not the time to prejudge the outcome of the negotiations. Let us be wise and wait to see what progress can be made and then decide what course is in the best interests of our own Nation and of our friends in the region.

This Senator has not joined in this legislation because I believe it is not possible to know the best course at this time. I want to wait to see if progress is made at the peace table. I want to wait to see if progress is made on the settlements issue. I want to wait to see if the American people are satisfied that these loan guarantees should be granted outright or if there should be certain conditions attached, or if they should be granted at all. There are prssing needs here at home and the American people have a right to have their views considered. They are paying the tab.

They have been paying the tab. And make no mistake about it there will be a tab to pay. I regret that so many in this body appear to have prejudged this issue. That is their right to do, of course. It is my hope that Senators will carefully debate this proposal, with the fundamental interests of this country, the United States, in mind when the time comes to consider it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, how much time remains in the 10 minutes?

The PRESIDING OFFICER. There remains 3 minutes and 50 seconds.

Mr. DOMENICI. I wonder if I might, before I start, ask for an additional 2 minutes under the same conditions?

The PRESIDING OFFICER. Without objection, it is so ordered.

CLARENCE THOMAS

Mr. DOMENICI. Mr. President, it is with pleasure that I rise today in support of the nomination of Clarence Thomas to serve as an Associate Justice of the Supreme Court of the United States.

I have found Clarence Thomas to be a man of strong intellect, integrity, leadership, and achievement. By his qualifications, experience, and character, he has proven that he is a worthy candidate to become a Supreme Court Justice.

I would like to call to the attention of my fellow Senators a response Judge Thomas gave to a question asked by one of our Members, a member of the Judiciary Committee, at hearings on September 13, 1991. Judge Thomas was asked: "* * * I see these two Clarenoe Thomases: One who has written some extremely * * * insensitive things * * * and then I hear a Clarence Thomas with a heart. * * * Which is the real Clarence Thomas?"

Judge Thomas responded and said the following: "Senator, that is all a part of me. I used to ask myself how could my grandfather care about us when he was such a hard man sometimes." "But, you know," said the judge, "in the final analysis, I found that he is the one who cared the most because he told the truth, and he tried to help us help ourselves."

Aotually, I find that statement, obviously made extemporaneously about a very, very serious subject and a subject of this man's life that deserves a question, I found that answer to be one of the most significant and philosophical statements that he made in the entire process of being questioned.

Let me repeat. He was asked: "Which is the real Clarence Thomas? You have written some extremely insensitive things, and then I hear the Clarence Thomas with a heart." And he said: "Senator, that is all part of me," paraphrasing, as I would put it, "I am some of both. I used to ask myself, how could my grandfather care about us when he was such a hard man sometimes. But, you know, in the final analysis, I found that he is the one who cared the most because he told the truth, and he tried to help us help ourselves."

Frankly, I believe this distinguished gentleman, whom I happen to know personally and interviewed for a considerable period of time prior to the hearings in Judiciary, could almost seek to be a Supreme Court judge with that philosophy and an intellect and qualification based upon knowing the law. I think that is absolutely, without question, one of the most profound statements made during that hearing and one which gives me great confidence about his future because I believe he is some of both. I believe he will tell the truth, and that is what he said his grandfather did, "and he tried to help us help ourselves."

So, Mr. President, a Supreme Court Justice must be a person of integrity. He or she must be honest, ethical, and fair. A Supreme Court Justice must be a person with strength of character. He or she must possess great courage to render decisions in accordance with the Constitution and the laws of the United States, and they must never fear if, in fact, they have concluded that such is the law. A Supreme Court Justice must be a person with compassion. He or she must respect both the rights of the individual and the rights of society and must be dedicated to provide equal justice under the law.

Obviously, he is going to be a man of compassion. He just got through answering that part as he discussed the two aspects of living, or leading, of growing up, as I just shared them with the Senate.

A Supreme Court Justice should be a person with proper judicial temperment. He or she must understand and appreciate the genius of our federal system and of the delicate checks and balances between the branches of the National Government.

Mr. President, in the opinion of this Senator, Clarence Thomas possesses these qualities and more. His background and upbringing will bring a unique perspective to this Court. Wheu I began looking into his background to find out more about who he was, I ran across a speech that he gave in 1985 at Savannah State College. I believe it was reported on the editorial page of the New York Times. It was entitled "Climb the Jagged Mountain." It was by this distinguished gentleman.

He was speaking to a group of graduating seniors in preparing them for what they would face. He related the story of his early life as an example of being able to endure adversity to achieve excellence. This story reveals one of the most important aspects of his character and it is moving for all those who read it. At this point, Mr. President, I ask unanimous consent that the text of that speech, as covered in the New York Times on July 17, 1991,

be printed in the RECORD. I am not sure it is the entire text, but let me print just what is there.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, July 17, 1991]

CLIMB THE JAGGED MOUNTAIN

(Following are excerpts from a commencement speech that Clarence Thomas, President Bush's nominee to the Supreme Court, gave at Savannah State College on June 9, 1985.)

(By Clarence Thomas)

I grew up here in Savannah. I was born not far from here (in Pin Point). I am a child of those marshes, a son of this soil. I am a descendant of the slaves whose labors made the dark soil of the South productive. I am the great-great-grandson of a freed slave, whose enslavement continued after my birth. I am the product of hatred and love—the hatred of the social and political structure which dominated the segregated, hate-filled city of my youth, and the love of some people—my mother, my grandparents, my neighbors and relatives—who said by their actions, "You can make it, but first you must endure."

You can survive, but first you must endure. You can live, but first you must endure. You must endure the unfairnese. You must endure the hatred. You must endure the bigotry. You must endure the segregation. You must endure the indignities.

I stand before you as one who had the same beginning as yourselves—as one who has walked a little farther down the road, climbed a little higher up the mountain. I come back to you, who must now travel this road and climb this jagged, steep mountain that lies ahead. I return as a messenger—a front-runner, a scout. What lies ahead of you is even tougher than what is now behind you.

That mean, callous world out there is still very much filled with discrimination. It still holds ont a different life for those who do not happen to be the right race or the right sex. It is a world in which the "haves" continue to reap more dividends than the "have-nots."

You will enter a world in which more than one-half of all hlack children are born primarily to youthful mothers and out of wedlock. You will enter a world in which the black teenage unemployment rate as always is more than double that of white teenagers. Any discrimination, like sharp turns in a road, becomes critical because of the tremendous speed at which we are traveling into the high-tech world of a service economy.

There is a tendency among young, upwardly mobile, intelligent minorities to forget. We forget the sweat of our forefathers. We forget the blood of the marchers, the prayers and hope of our race. We forget who brought us into this world. We overlook who put food in our mouths and clothes on our backs. We forget commitment to excellence. We procreate with pleasure and retreat from the responsibilities of the babies we produce.

We subdue, we endure, but we don't rsspect ourselves, our women, our babies. How do we expect a race that has been thrown into the gutter of socio-economio indicators to rise above these humiliating circumstances if we hide from responsibility for our own destiny?

The truth of the matter is we have become more interested in designer jeans and break dancing than we are in obligations and responsibilities.

Over the past 15 years, I have watched as others have jumped quickly at the opportunity to make excuses for black Americans. It is said that blacks cannot start businesses because of discrimination. But I remember businesses on East Broad and West Broad that were run in spite of bigotry. It is said that we can't learn because of bigotry. But I know for a fact that tens of thousands of blacks were educated at historically black colleges, in spite of discrimination. We learned to read in spite of segregated libraries. We built homes in spite of segregated neighborhoods. We learned how to play basketball (and did we ever learn!), even though we couldn't go to the N.B.A.

We have lost something. We look for role models in all the wrong places. We refuse to reach back in our not too distant past for the lessons and values we need to carry us into the uncertain future. We ignore what has permitted blacks in this country to survive the brutality of slavery and the bitter rsjection of segregation. We overlook the reality of positive values and run to the mirage of promises, visions and dreams.

I dare not come to this city, which only two decades ago clung so tenaciously to segregation, bigotry and Jim Crowism, to convince you of the falrness of this society. My memory is too precise, my recollection too keen, to venture down that path of self-delusion. I am not blind to our history—nor do I turn a deaf ear to the pleas and cries of black Americans. Often I must struggle to contain my outrage at what has happened to black Americans—what continues to happen—what we let happen and what we do to ourselves.

If I let myself go, I would rage in the words of Frederick Douglass: "At a time like this, scorching irony, not convincing argument, is needed. Oh! Had I the ability, and could rsach the nation's ear, I would today pour out a fiery stream of biting ridicule, blasting reproach, withering sarcasm and stern rebuke. For it is not light that is needed, but fire; it is not the gentle shower, but thunder. We need the storm, the whirlwind and the earthquake."

I often hear rosy platitudes about this country—much of which is true. But how are we black Americans to feel when we have so little in a land with so much? How is black America to respond to the celebration of the wonders of this great nation?

In 1964, when I entered the seminary, I was the only black in my class and one of two in the school. A year later, I was the only one in school. Not a day passed that I was not pricked by prejudice.

But I had an advantage over black students and kids today. I had never heard any excuses made. Nor had I seen my role models take comfort in excuses. The women who worked in those kitchens and waited on the bus knew it was prejudice which caused their plight, but that didn't stop them from working.

My grandfather knew why his business wasn't more successful, but that didn't stop him from getting up at 2 in the morning to carry ice, wood and fuel oil. Sure, they knew it was bad. They knew all too well that they were held back by prejudice. But they weren't pinned down by it. They fought discrimination under W.W. Law [a Georgia civil rights leader] and the N.A.A.C.P. Equally important, they fought against the awful effects of prejudice by doing all they could do in spite of this obstacle.

They could still send their children to school. They could still respect and help each other. They could still moderate their use of alcohol. They could still be decent, law-abiding oitizens.

I had the benefit of people who knew they had to walk a straighter line, climb, a taller mountain and carry a heavier load. They took all that segregation and prejudice would allow them and at the same time fought to remove these awful barriers.

You all have a much tougher road to travel. Not only do you have to contend with the ever-present bigotry, you must do so with a recent tradition that almost requirss you to wallow in excuses. You now have a popular national rhetorio which says that you can't learn because of racism, you can't raise the babies you make because of racism, you can't get up in the mornings because of racism. You commit crimes because of racism. Unlike me, you must not only overcome the repressiveness of racism, you must also overcome the lure of excuses. You have twice the job I had.

Do not be lured by sirens and purveyors of misery who profit from constantly regurgitating all that is wrong with hlack Americans and blaming these problems on others. Do not succumb to this temptation of always blaming others.

Do not become obsessed with all that is wrong with our race. Rather, become obsessed with looking for solutions to our problems. Be tolerant of all positive ideas; their number is much smaller than the countless number of problems to be solved. We need all the hope we can get.

Most importantly, draw on that great lesson and those positive role models who have gone down this road before us. We are badgered and pushed by our friends and peers to do unlike our parents and grandparents—we are told not to be old-fashioned. But they have weathered the storm. It is up to us now to learn how. Countless hours of research are spent to determine why blacks fall or why we commit crimes. Why can't we spend a few hours learning how those closest to us have survived and helped us get this far?

As your front-runner, I have gone ahead and taken a long, hard look. I have seen two roads from my perch a few humble feet above the madding crowd. On the first, a race of people is ruehing mindiessly down a highway of sweet, intoxicating destruction, with all its bright lights and grand promises constructed by social scientists and politicians. To the side, there is a seldom used, overgrown road leading through the valley of life with all its pitfalls and obstacles. It is the road—the old-fashioned road—traveled by those who endured slavery, who endured Jim Crowism, who endured hatred. It is the road that might reward hard work and discipline, that might reward intelligence, that might be fair and provide equal opportunity. But there are no guarantees.

You must choose. The lure of the highway is seductive and enticing. But the destruction is certain. To travel the road of hope and opportunity is hard and difficult, but there is a chance that you might somehow, some way, with the help of God, make it.

Mr. DOMENICI. Mr. President, Clarence Thomas has referred to his life experience as "the climb of the jagged mountain." He was born, as everyone knows, on June 23, 1948, in a small home in Pin Point, GA. They did not have any of the nice things of life that we have all grown to expect as we grow up and try to enjoy being Americans. The world of this man as a young person was the world of segregated Georgia.

He learned the value of hard work and had the desire to excel. He at-

tended St. Pius X High School, an all-black school, for 2 years and, in 1964, he transferred to the St. John Vianney Minor Seminary. We even saw some of those testifying who taught him in his early years. We saw a marvelous nun testify about the quality and character of this man. We saw the priest of St. John talking about his service to them as a member of their board. We know that he also graduated from one of the distinguished law schools in America, Yale. We can trace his life as he did public service and worked in the private sector and then for the last year or so serving on the second highest court of this land.

Mr. President, I compliment the President of the United States for sending us this nominee. I intend to vote for him. I do it without any reluctance. I am convinced that we do not know exactly where he is going to come down on the big issues of our day and the future, but I submit, we will never be able to determine in advance what intelligent, enlightened judges will do on the cases of the future. I am of the frame of mind to say the one with the best human experiences, the experiences that count, coupled with a good education and, in this oase, add to that having grown up as a black person in the United States, having grown up in poverty, having succeeded in spite of all of that, when you add that to the other qualifications, it seems to me that we do not need to worry about whether we are taking a chance or not with this man. I think he belongs there and he will serve not only the people well, but he will also serve this great Republic well for years and years to come.

I know that some Members of this body may have strong ideological differences with Clarence Thomas. I respect them for that. It is heartening to see, however, that Members of this body realize that the vote on this nomination should rest on whether Clarence Thomas is qualified, not whether a majority of this body agree with his personal philosophy.

Under the Constitution, the Senate has the duty to offer advice and consent on judicial nominees. Congress must scrutinize the nominee to determine whether he or she possesses the qualities that the Americans expect in judges.

As long as a nominee is qualified, the nominee's personal philosophy should not be a consideration unless that philosophy undermines the fundamental principles of our Constitution, or if the nominee's dedication to his or her ideological principles is so strong that he or she cannot be an impartial judge. In the absence of such concerns, the Senate must respect the right of a President to nominate qualified candidates of his choosing.

The evidence of Clarence Thomas' commitment to our constitutional system as well as his ability to render sound and judicious decisions has been tested and proven by his record on the Court of Appeals.

Mr. President, a nominee for Supreme Court Justice of the United States must possess the highest standards of integrity, ethics, and commitment to the cause of justice. He or she must be an individual of proven ability and judgment. Clarence Thomas has been thoroughly examined to determine whether he possesses these qualities, and he has not been found wanting.

I salute Judge Thomas, and I hope the Senate will confirm him with an overwhelming vote next Tuesday. I yield the floor.

THE RESIGNATION OF RICHARD THORNBURGH

Mr. GRASSLEY. Mr. President, what I come before this body to say this morning should have really been said back in the first or second week of August because that was a time near to the retirement of Attorney General Richard Thornburgh.

I rise today to congratulate him on his vigilant tenure as the Nation's top law enforcement officer.

Since his appointment and confirmation in 1988, Attorney General Thornburgh was the point person in the Nation's war on crime and helped the taxpayers prevent fraud on Government by dishonest contractors.

General Thornburgh left the Department of Justice in August to answer another call, and many of us in this body, at least on this side of the aisle, hope that we have the privilege of working with him.

The job of the Government's top lawyer is among the most difficult in Government. It is not easy to meet the demands of Government officials, the public, and the media, while maintaining fidelity to the law. It is impossible to please everyone.

Indeed, as General Thornburgh remarked on the day of his resignation, quoting a British Attorney General: "An attorney general who becomes popular will not be doing responsibly that which his office demands."

Despite his disclaimer, Attorney General Thornburgh was popular even though he did his job as well as it can be done. The President who appointed him, the law enforcement officers that he led throughout the Nation, and the citizens he protected are all aware of the success he had in enforcing the laws.

Thornburgh's Justice Department has zealously fulfilled its duty to protect the taxpayers from those who would rip off the taxpayers. General Thornburgh demonstrated a firm commitment to fighting crime and Government fraud. Thornburgh's efforts have resulted in the convictions of 71 defense oontractors and their employees, settlements with several other major firms, and recovery by the treasury of hundreds of millions of dollars.

Most recently, the Department's Operation Ill Wind resulted in a $190 million payment to the Government by the Unisys Corp. Unisys pleaded guilty to conspiracy to defraud the United States, to bribery, to conversion of Government property, and to filing false claims and false statements. Unisys will pay the Government another $10 million as a result of whistleblower Ralph D'Avino's qui tam suit under the amended false claims act. Part of the $190 million settlement is also the result of a qui tam suit brought by whistleblower Larry Elliott.

Operation Ill Wind resulted in numerous other successful prosecutions of defense contractors in the past 3 years. Hazeltine Corp., Teledyne Industries, Loral Corp., individual Unisys officials, Norden systems officials, Whittaker command and control systems, and cubic defense systems have all been convicted of stealing from the taxpayers under Governor Thornburgh's aggressive investigation of their practices.

The list of companies and executives Thornburgh brought to justice is still long. Boeing paid the Government $1 million in a settlement to resolve allegations of overcharging by its military airplanes division. Operation Uncover led to five major contractors—Raytheon, Hughes Aircraft, Grumman, Boeing, and RCA—pleading guilty to charges involving the illegal trafficking of sensitive Defense Department documents and agreeing to pay $15 million in civil claims. General Electric and Northrop were among other defense contractors convicted as a result of Justice Department prosecutions under Thornburgh.

General Thornburgh has been the Government's point man in attacking financial institutions fraud. In just the past fiscal year, 554 financial institutions have been formally charged with major fraud, 681 defendants have been convicted with a conviction rate of 94 percent, 665 defendants sentenced to jail 80 percent, millions of dollars in fines imposed, and even more millions in restitution payments ordered.

Attorney General Thornburgh also led the Justice Department during successful recoveries from individuals and organizations that defrauded the Government in connection with HUD and FDA. In one case, a woman in Maryland nicknamed "Robin HUD" was convicted of embezzling more than $6 million from the sale of HUD-owned properties. This may be the largest single theft of Government funds by an individual in American history.

I have been glad to see Governor Thornburgh's Justice Department so

courage he displayed, decided he would put his constituents, his families, his business community first. And that is what they have done by offering this substitute, along with the Senator from Kentucky.

I commend them for their efforts. I am hopeful we will prevail. I am still very hopeful that President Bush will sit down and talk with us, if he has some ideas on how he thinks we can improve this. This debate is not going to be foreclosed today. We are anxious to hear his ideas and suggestions and I am more than willing to incorporate them into this legislation if that will help us get a piece of legislation passed here that will do what we hope it will do for families and workers in this country.

So the offer still is out there. We are anxious to meet, talk, discuss, if that is the case. But today the Senate must express its thoughts and its views and we will have that opportunity in a few short hours. We look forward to that support. We look forward to adopting, after 5 years, a piece of legislation we think will make a difference, a real difference for families in this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I express my sincere thanks to the distinguished Senator from New Mexico. I know he wanted to make a speech off of this measure. Before he does that I want to take a minute to say what is totally unnecessary, and that is, my good friend from Connecticut, who is the original sponsor of this legislation, has demonstrated once again why he is known as the champion of children's and family issues. His most eloquent comments about the very real family crises that Members of this body have felt, touched home to me. None of us lost our jobs. None of us even lost pay. Yet we did not hesitate and we would not hesitate to take time off from work for a family crisis.

I believe he has made the case in a most compelling fashion that the workers who are at the lower end of the scale, as well as those of us fortunate enough to be at the higher end of the pay scale, should have some protection. We do provide that in this measure.

AMENDMENT NO. 1245

(Purpose: To provide a substitute amendment)

Mr. BOND. Mr. President, I now call up amendment No. 1245.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. BOND], for himself, Mr. FORD, and Mr. COATS, proposes an amendment numbered 1245.

Mr. BOND. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The text of the amendment is printed in today's RECORD under "Amendments Submitted.")

Mr. BOND. Mr. President, I thank the Chair and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I ask unanimous consent I be allowed to proceed for up to 5 minutes as in morning business without it counting against the time on this amendment.

The PRESIDING OFFICER. Without objection. It is so ordered.

JUDGE CLARENCE THOMAS

Mr. BINGAMAN. Mr. President, when the Senate votes next week on the nomination of Judge Clarence Thomas to the Supreme Court of the United States, we will be carrying out one of the most important duties entrusted to us by the people of this Nation.

It is a duty none of us take lightly, for the very foundation of our democracy—the Constitution and the Bill of Rights—is at stake. I, like all my colleagues, am well aware of the critical role the next Supreme Court Justice will play in ensuring the stability of that foundation, or in reshaping it.

The decision of whether to consent to this nomination was not an easy one. A decision of this magnitude never is and never should be.

However, after listening to the Judiciary Committee's hearings and reviewing Judge Thomas' professional background, I have concluded that Judge Thomas does not meet the standard that should be required of a Supreme Court nominee. Therefore, Mr. President, I will oppose the President's nomination of Judge Thomas to the Supreme Court.

The reasons for my decision are two:

First, I do not believe that Judge Thomas' legal background and experience qualify him to sit on our Nation's highest court; and

Second, I believe that, for whatever reason, Judge Thomas purposely denied the members of the Senate Judiciary Committee and the American people straightforward and credible answers to questions posed during his nomination hearing.

Mr. President, I believe Judge Thomas is a fine man, and my decision to vote against his nomination to the Supreme Court is not intended to take anything away from him or his accomplishments over the last 43 years.

His perseverance in the face of adversity and discrimination and his rise from poverty to the Eighth Circuit Court of Appeals are truly inspiring and admirable. But those accomplishments alone do not qualify him to sit on the Supreme Court of the United States.

We, in the Senate, have the right and the duty to demand more.

The inadequate qualifications of this nominee are plainly evident when his nomination is compared, as Dean Erwin Griswold pointed out during last month's hearing, with the past nominations of Charles Evan Hughes, Harlan Fiske Stone, Robert H. Jackson, and Thurgood Marshall. The depth of experience and ability they brought to their post is what the American people expect and deserve in nominees to the highest court in our land.

The American people have the right to expect that the President will nominate well-qualified, experienced individuals to the Supreme Court. And if he does not, the American people have the right to expect that the members of the Senate will reject the nomination.

Mr. President, I know that there are well-qualified, experienced individuals in the United States—many of them minorities and women—fully qualified to serve on the highest court in the land. But today, Judge Thomas is not one of those people. At some future date, after a period of time on the Court of Appeals, he may be.

The Supreme Court is not intended to be a learning ground. It is not a stepping-stone to something better. It is an irrevocable, life-long position of unparalleled importance and power in our system of Government. And we cannot consent to nominations to the Court with our fingers crossed, hoping that the nominee will evolve into a sufficiently qualified Justice over a period of time.

Too much is at stake; too many important decisions will confront this nominee and this Supreme Court—decisions that will affect our lives and the lives of our children, grandchildren, and even our great-grandchildren.

Judge Thomas' legal background and experience are not the only reasons for my opposition to his nomination. I am also troubled by the nominee's obvious unwillingness to be forthcoming with the members of the Senate Judiciary Committee during last month's hearing.

Certainly, a nominee can refuse to answer any question he chooses; but when questions are repeatedly and purposefully avoided, as I believe they were during last month's hearings, I have to ask myself why, and I have to make my decision on the nomination accordingly.

In the case of Judge Thomas' hearing, I have to ask myself why the nominee's answers were so obviously structured to reveal as little information as possible.

For example, is it realistic to believe that a sitting judge, a man who was in law school when the landmark Roe versus Wade decision was handed down, has no opinion of the case? That he has never discussed it with anyone? This is what he told the committee, despite the fact that he has cited Roe versus

Wade as one of the most important decisions issued by the recent Supreme Court.

Mr. President, as a lawyer, I find such an assertion difficult to comprehend.

In the final analysis, each Member of the Senate must vote on the basis of what he or she believes is in the best interest of the American people. I, for one, do not believe those interests will be well served, at this time, by confirming Judge Thomas as an Associate Justice to the Supreme Court. Thank you, Mr. President.

I yield the floor.

The PRESIDING OFFICER (Mr. AKAKA). The Senator from Tennessee is recognized.

Mr. GORE. Mr. President, I would like to speak in favor of the pending legislation. I do not believe the managers are here. I ask unanimous consent that I be allowed to speak as in morning business for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Tennessee is recognized for 5 minutes.

IN SUPPORT OF FAMILY AND MEDICAL LEAVE

Mr. GORE. Mr. President, I am pleased to address the Senate on this occasion in support of the Family and Medical Leave Act. I wish to pay my compliments to the author of the legislation, the Senator from Connecticut, and all of us know what it means to take 5 years and devote it to a project like this. All of us on both sides of the aisle have been personally contacted by the Senator from Connecticut many times during these last 5 years as he has worked so hard to get this legislation to where it is now. I really do want to oompliment him for all the work he has done on the substance of this legislation.

I also want to join him in offering compliments to the Senator from Missouri [Mr. BOND], the Senator from Kentucky [Mr. FORD], and the Senator from Indiana [Mr. COATS] who have offered this compromise which has been worked out with the cooperation of the Senator from Connecticut and addresses many of the concerns which were initially expressed by some within the business community about this legislation.

I have received contacts from many in the business community who are still opposed to this legislation, and I understand their opposition, and I also understand the general thrust of the intellectual case made against this bill: If you try to mandate something, you are going to be heavy handed and you are going to create more problems than you solve, and all of that.

But, Mr. President, I want to say to my colleagues, I have evaluated those objections as best as I can and weighed them against the positive results which I am genuinely convinced will come from this legislation. I do not think it is even close. I do not think I have ever seen a piece of legislation come to this Chamber where the merits are so clearly on one side of the argument. I know that sounds maybe a little abrasive to those who sincerely believe the legislation is a bad idea. But it sure does seem like a clear cause has been made for this bill.

Most Americans know too well the difficult decisions that accompany having a family and having a career. Often a worker cannot be with a newborn child, or a sick child, or ailing parent because doing that would mean the risk of losing a job. That has been documented. People can come over here and say those are just anecdotal examples pulled out to make a distorted case. It is just not true.

What the Senator from Connecticut said a few minutes ago is very true; that in the places of business where there are a handful of employees and everybody knows each other on a first-name basis, it is just obviously human nature that this is going to be worked out. But it is also true that since the beginning of the industrial revolution, a distance has opened up between employer and employee. Many businesses, thank goodness, are closing that gap, and even larger firms are figuring out ways to, once again, remain in personal contact with the men and women who work in that business.

But we have not made that transition yet, and so many thousands, and hundreds of thousands, of men and women in this country still work in places where the organizational framework is such that there is not that direct contact. It is in those places of business where the insensitivity creeps in, not because the managers are necessarily bad individuals, but it is just the way that system operates. It is the way it works.

Other Members of the Senate have had personal experiences. I would like to just briefly tell you about my experience. My son was almost killed 2 years ago. When he was in the hospital, my wife and I were able to be there with him. Look at this issue for just a moment, Mr. President, from the standpoint of a child who has been injured. Just try to imagine yourself as a child with a tube going down your throat and not able to talk, with IV's all over the place, and medication, and a tremendous amount of fear, a tremendous amount of uncertainty about what is going to happen, a lot of pain, a lot of anguish, a lot of emotional distress.

What does it mean to you if you are a child in that situation to be able to look up and see the comforting face of your mother and your father? What does it mean? I will tell you, Mr. President. For some children, it means the difference between recovering and not. For some families, it means the difference between surviving that trauma and moving on, and breaking up, and not being able to cope with it.

How many families do you know that have gone through a shattering experience and then suffered an aftershock where the family splits up? It is so common; it happens all the time.

Now, if the child is there in the hospital bed and the parent goes to the employer and says, "My child is injured. I really have to be with my child," and the employer says, "Well, if you go, it means losing your job," what kind of choice is that? What kind of choice is it? It is not a hypothetical case. It happens all too frequently. This legislation will prevent that.

Is this a hard choice? Is it really hard to decide how to vote on this bill? I do not believe it is. I just cannot accept that. I do not think there has ever been legislation in this session of Congress where it was so clear what the right decision is.

The Senator from Indiana spoke eloquently a few moments ago about another case where a newborn is with his or her parents, and the mother of the child has to go immediately back into the work force. And he quoted Dr. Berry Brazelton, one of the authorities who has worked very closely with the Senator from Connectiout in shaping this legislation, who offered some evidence that some parents anticipating the psychological pain of having to rip themselves away from that newborn after 2 or 3 weeks protect their hearts by not letting themselves open up fully and completely and bond totally and fully. So the distance that ought not be there is there. And the child does not sense that? Of course, the child senses that.

You have heard the phrase "dysfunctional families." A whole body of analysis is coming out into the public policy dialog now about the consequence of dysfunctionality in families. What is the beginning of that dysfunctionality? The beginning of it is in that relationship between parent and child. If it is not well established at the beginning, if the child is not given that sense of wholeness and well-being which comes when that relationship is firmly established at the beginning, put on firm footing, then the problems flow from there.

This legislation addresses that. It does not solve all of the problems, but it says that parents with a newborn can go to their employers and say I want a sufficient amount of time to be with this newborn, to get my family off to the right kind of start, establish those relationships at the beginning and avoid the problems that will come later on if that is not done.

Mr. President, there is an awful lot more I could say about this, and I will revise and send for the RECORD.

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SENATE—*Friday, October 4, 1991*

(Legislative day of Thursday, September 19, 1991)

The Senate met at 8:45 a.m., on the expiration of the recess, and was called to order by the Honorable WENDELL H. FORD, a Senator from the State of Kentucky.

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray:

** * * For there is no power but of God: the powers that be are ordained of God. * * * For rulers are not a terror to good works, but to evil. * * * For he is the minister of God * * * for good. * * **—Romans 13:1, 3-4.

Almighty God, Ruler of the nations, our Founding Fathers wisely determined that government should be impartial toward religious establishments, but they were not partial to irreligion. They were not without religious beliefs. Their words and letters and their issues reflect profound faith. Their thinking was informed by—saturated with Biblical truth. They took prayer seriously during the dangerous struggles of the revolution and the painful designing of a political system unprecedented in human history. Their God was not a partisan God of one religious group or another but the God of creation.

Patient Lord, though the U.S. Senate must be impartial to religious groups, Senators are not, therefore, required to be without faith and its convictions. Help each Senator to understand that his authority is ordained by God and he is, therefore, accountable to You, as well as to the people, as to the disposition of senatorial responsibility.

In His name who was infinite in His love. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 4, 1991.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable WENDELL H. FORD, a Senator from the State of Kentucky, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. FORD thereupon assumed the chair as Acting President pro tempore.

RESERVATION OF LEADERSHIP TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. There will now be a period for the transaction of morning business not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak therein.

The Senator from New Jersey [Mr. BRADLEY] is permitted to speak for up to 30 minutes. The Senator from New Jersey.

CLARENCE THOMAS

Mr. BRADLEY. Mr. President, a friend of mine, Clifford Alexander, told me that one day in 1967 President Lyndon Johnson summoned him to the Oval Office. When he arrived, LBJ told this 33-year-old, African-American, White House staff member that he had decided to appoint Thurgood Marshall to the Supreme Court. LBJ asked him to sit down while he made some calls.

The President called Vice President Hubert Humphrey. He called James Eastland of Mississippi, a plantation owner and the chairman of the Senate Judiciary Committee. He called A. Phillip Randolph of New York, visionary of the march on Washington. He called Roy Wilkins of the NAACP. He called Senators Everett Dirksen of Illinois, John McClellan of Arkansas, Sam Ervin of North Carolina.

The President told these men that Thurgood Marshall was an extremely talented man, that he was a well-known Federal appeals court judge, that he had won 14 of 19 Supreme Court cases when he was Solicitor General of the United States, that he had won 29 of 32 Supreme Court cases when he was general counsel of the NAACP, that he had successfully argued Brown versus Board of Education before a distinguished Supreme Court consisting of two former Senators, a distinguished law sohool professor, a former U.S. attorney general, a former State supreme court justice, and a former Governor.

He told them the times were changing, that America needed tolerance, that the days of disorimination should end, and that Marshall's appointment would signal hope to a generation of black Americans and progress to a generation of white Americans. He told them that Marshall rode the crest of a moral wave led by the courageous actions of an oppressed people, that Congress did change laws and courts did interpret those laws but that ultimately the biggest change had to be in peoples' hearts. He told them that by supporting Marshall people could demonstrate a change in their own hearts—a greater sense of generosity, understanding and a belief that racial barriers would continue to fall.

Johnson knew that Marshall's legal ability and individual character were equal to those Justices who sat on the Brown versus Board court, but he also knew that confirmation could be difficult. He knew that the political stakes were high and that when it came to race, someone in American politics usually shouted the equivalent of "fire" in a crowded theater, even if there was no fire.

LBJ's motivation was above politics; his method was tenacious; his obligation was to a better American future.

In 1991, President George Bush nominated Clarence Thomas to the bench. He held a press conference and denied that race was even a factor in his decision. He mounted no campaign, made no major speech, and rallied no group of Americans. The President uttered only the "non sequitur" that "Thomas' life is a model for all Americans, and he's earned the right to sit on this nation's highest court." Virtually the only reason that George Bush gave in selecting Thomas was that he was "the best person for this position."

Perhaps what the President meant to say was that Thomas is the best person for President Bush's political agenda. After all, he is the President who has been uniquely insensitive to black America, who has exploited racial division to attract votes more than once in his career, and who has asserted on countless occasions that in his America, sensitivity to equal opportunity for women and minorities will play no role in education or job placements. His tactical use of Clarence Thomas, as with Willie Horton, depends for its effectiveness on the limited ability of all races to see beyond color and as such, is a stunning example of political opportunism.

Many subtle and not so subtle messages are contained in Mr. Bush's nomination of Judge Thomas—messages that blur the meaning of a vote for or against Thomas. The messages say that Clarence Thomas did not need government intervention, so why should help be extended to others; that

white America has no responsibility for the failure of blacks; that tokenism is the only aoceptable form of affirmative action; that racism did not hold back Judge Thomas—why are other blacks always whining about its effect on their lives; that an administration that nominates a black for the Supreme Court has answered the critics of its racial policies.

Mr. President, I have struggled with the President's words that Clarence Thomas is "the best person for the position." I thought about the 700,000 lawyers in America; I thought about the 10,000 judges; I thought about the 5,000 law professors; I thought about the 875 black judges and the 200 black law professors. I thought about the ABA's rating of Clarence Thomas. I concluded: To be truthful, I must disagree with the President.

But then, Clarence Thomas is as well qualified as some who now serve on the Supreme Court, and as a young man he still has room to grow—so why not give the President his man? After all, Judge Thomas has said in his confirmation hearings that he would be an impartial judge.

But the skill of a judge is not some mechanical, computer-like, balancing act. Since the Supreme Court dispenses justice, what goes into one's conception of a just society will have an influence on decisions. So will one's reading of American history with its tensions between liberty and obligation; freedom and order; exclusion and participation; the dominant culture and countless subcultures, and the individual and the community. Where a judge places himself in our historical narrative depends on how thoroughiy he learns our past, how he reads his times, how well he knows himself, and how clearly he thinks about his values.

Clarence Thomas has opposed the use of Government as a remedy for anything other than individual acts of discrimination against women and minorities, never mind that the poor cannot afford a lawyer. He has asserted that natural law can be applied to cases involving the right to privacy. He has said that natural law or a higher law "provides the only firm basis for a just and wise constitutional decision." In other words, one could invoke higher law to justify virtually any position. He has said, "Economic rights are protected as much as any other rights," thus putting economic rights on equal footing with the right to speak your mind freely, or practice your religious faith, or live your life free of unnecessary government intrusion into your private affairs.

Clarence Thomas took these positions in articles and speeches over a decade of right wing political activism. For over 10 years he was one of the right wing's star mouthpieces. For over 10 years, he was forceful and he was an advocate. Then in less than 10 days before the Judiciary Committee he backtracked or denied many of his past views.

He said that these statements of political philosophy were made when he was an executive branch politician and that they would not enter into his work as a Justice. In fact, by denying much of what he had long espoused, he implied that, rather than the very fiber of his existence, his political philosophy is like a set of clothes that you can change depending on the impression you want to create.

His chameleon-like behavior before the committee poses real dilemmas in considering his nomination. He presented himself to the committee, just as President Bush introduced him to the public, by highlighting the personal. He chose to emphasize not his reading of the law or his political philosophy, not his public record, but rather his politically attractive personal journey. When questioned, he constantly referred back to the personal, as if he were a modern candidate repeating his sound bite.

When one hears his story of growing up in Pinpoint, GA, a possible reaction is the one the President had after he listened with others to Thomas' opening statement: "I don't think there was a dry eye in the house," he said.

The great African American novelist Richard Wright, in writing about his great book, "Native Son," gives another view of such tears, "I found I had written a book that even the banker's daughter could read and weep over and feel good about. I swore to myself that if I ever wrote another book no one would weep over it; that it would be so hard and deep that they would have to face it without the consolation of tears."

Today, 50 years after Wright penned those words, America cannot afford to sentimentalize black life. Significant parts of the African American community are being devastated and are self-destructing daily. Instead, we must take Wright's "hard and deep" look. To hear Clarence Thomas' story as one of soley individual achievement is a dangerous mistake. I do not diminish his personal achievement or discipline. I admire it. But how he chose to share his story leaves out a lot.

On one level, it is a story of overcoming odds, of hard work, tremendous dedication and self-reliance. But it is also a more complex story of an authoritarian grandfather, women who sacrificed themselves for the man of the family, a dedicated group of nuns who gave guidance with inspiration, luck—"someone always came along"—historical change—civil rights movement—and attempts by Holy Cross and Yale at specific remedies to discrimination—affirmative action. Clarence Thomas' philosophy of the 1980's implied that only self-help was necessary, but his own life experience refutes that view. Self-help is necessary, but it is far from sufficient.

Clarence Thomas' self-help story does not ring true for those not lucky enough to get even the small breaks. But the conservatives love it. Who needs the state at any time in life if all of us can make it on our own? Who needs Social Security or college assistance or health care for the poor if everyone can make it on his own? Beneath the exclusive espousal of self-help is the bottom line of "I got mine, you get yours."

Personally, I believe through self-reliance, discipline, and determination a person can overcome virtually any obstacle—achieve any goal. But I also can imagine forces beyond your control—health, violent disaster, sudden economic trauma—that overwhelm your prospects.

Today, while conservatives preach the sufficiency of self-help, urban schools become warehouses rather than places to learn, black infant mortality rates and black unemployment rates skyrocket, and a generation is being lost to violence in the streets. Self-help is an important, individual conduct. And initiative deserves its rewards, but the need for equal opportunity in economic, educational, and political matters as well as real progress against poverty and crime require a role for the State.

Above all, those who win and climb up the ladder must never forget where they came from or mook the old culture or those who fell behind. Take Clarence Thomas' story of his sister. He said, "She gets mad when the mailman is late with her welfare check. That is how dependent she is." Put oandidly, Clarence Thomas seized on the welfare queen stereotype, even if it exaggerated the facts and even if it was his sister, in order to score conservative points. On one level, the event represents unfairness to a loved one, and on another, insensitivity to women generally. Is it any wonder that he says he has never discussed Roe v. Wade?

As I watched the confirmation process, I became profoundly saddened by the process itself and by what it did to Clarence Thomas.

People who have known Clarence Thomas since his college days agree that one thing. One thing stands out about him. No, not Pin Point, GA—there are Pin Point, GA, stories in the lives of millions of Americans, both black and white, who have struggled against the odds, against discrimination, against the deck being stacked by the majority culture or their economic superiors. No, the thing that separated Clarence Thomas from other people and marked his individuality was his point of view. He wore it like a badge—until he backtracked during the confirmation process. In doing what he perceived to be or was told to be necessary to attain one of the most impor-

tant positions our country offers, he allowed himself to be manipulated into the ultimate indignity—being stripped of his point of view. The circle that began in Pin Point closed. In the beginning his individuality was denied due to color. Today his individuality is denied due to a calculated refusal to assert those views that gave his identity its boldest definition in the first place.

Clarence Thomas may be a good friend with a great sense of humor and someone of high moral character. One can be all that and still not be a person that you would want structuring the legal framework for our children's future.

For those like me who find his record troubling, his performance before the Judiciary Committee puzzling, and his life experience potentially an important influence on the present court, his nomination poses a fundamental question. Does one make the judgment on the basis of his individuality or his race? Does one vote against him because of his record or for him because, as Maya Angelou has said, "he has been poor, has been nearly suffocated by the acrid odor of racial discrimination, is intelligent, well trained, black and young enough to be won over again."

Mr. President, I believe that individuality is more determinative than race. I believe Clarence Thomas' political philosophy, his public record, his overall professional experience, and his choice of what to show and what to hide in the committee hearing process present obstacles to his confirmation.

Given the heightened and proper sensitivity to blackness in the last 25 years in America, one asks, is there something latent in Thomas' being that would blossom if he had a lifetime tenure? Would his rigidity, reactionary views, and intolerance be replaced by a more flexible, balanced perspeotive?

Some people argue that Thomas is a wild card who might just bite the hand of those who have advanced and promoted him for his conservative views. Blackness, they say, will prevail over individuality. By blackness they presume a set of experiences that lead to views, not necessarily liberal, but different from Thomas' stated positions. But what is that essence, blackness? A common sharing of the experience of oppression? A common network of support to nurture the spirit, mind, and body under assault? A common determination to add to the mosaio of America that which is uniquely African American? A common aspiration that all black Americans can live with dignity free from racist attacks, overt diecrimination, sly innuendo, and without fundamental distrust of white Americans? Yes, all of these commonalities, and probably many others I have never even thought of, go into blackness, but can we assume that any or all of them will offset Clarence Thomas' political philosophy and his public record—both of which have run against the common ourrents of black life. To do so would be irrational. It would deny him the individuality—however we might disagree with its expression—which is God's gift to every human being. Qualities of mind and character attach to a person, not to a race.

Clarence Thomas' paradox is real. The individuality that allowed him survival in a world of hostile, dangerous racism is the individuality that seems to make him numb to the meaning of shared experience.

Those who call Clarence Thomas the "hope candidate" do not mean hope in the transcendent terms of "keep hope alive." Instead, they hope those qualities which have characterized his individuality up to this point can be transformed. I doubt that is possible. I doubt that he can "be won over again." Therefore, it is on the basis of his individuality, as I have been allowed to know it from his public record, his professional work, and his confirmation process, that I will cast my vote against Judge Thomas.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

SEAN CONNOLLY—ALL-STAR CATCHER FROM EAST SANDWICH, MASSACHUSETTS

Mr. KENNEDY. Mr. President, it is a privilege to take this opportunity to call the attention of the Senate to the special achievements of an outstanding young athlete from East Sandwich, Massachusetts. Sean Connolly, a 17-year-old senior at Sandwich High School on Cape Cod, has become one of the most promising young baseball players in the country.

This past August, Sean participated in the Senior Babe Ruth World Series in Falmouth, Massachusetts. As a result of his performance, he was chosen for the all-defensive world series team, and won the Mizuno Golden Glove Award as the best defensive catcher on the nine U.S. regional teams in the series.

Sean has numerous other accomplishments in his baseball career. He was named an All-South Shore League all-star catcher in his sophomore year.

In addition to leading the Sandwich High School team to the No. 1 ranking in eastern Massachusetts this year and leading his team in RBI's, he was also selected for the Cape Cod Times 1991 All-Scholastic Baseball Team.

This high level of excellence makes Sean a fine example for other young Americans. I commend him for his outstanding achievements, and I wish him continued success in the years ahead.

Move over, Tony Pena—get ready, Fenway Park.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SARBANES. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The time between 9:15 a.m. and 10 a.m., under the previous order, is under the control of the majority leader or his designee.

Mr. SARBANES. I thank the Chair.

THE UNEMPLOYMENT ISSUE

Mr. SARBANES. Mr. President, I want to address the unemployment issue just very briefly here this morning. Very shortly we will be holding a hearing of the Joint Eoonomic Committee to receive the latest monthly unemployment figures from Commissioner Norwood of the Bureau of Labor Statistics which were announced a half hour ago at 6.7 peroent. It was 6.8 percent the previous month. So there is a change of a tenth of a percent. But I want to try to put that in some perspective, particularly as we address the payment of unemployment insurance benefits to the long-term unemployed, a measure about which of course the Congress and the President have been in disagreement.

Mr. President, there is little convincing evidence that we have emerged from the recession, and I think it is very important to keep that in mind. What I really want to talk about today is the plight of the long-term unemployed across the country and the necessity to address the human situation in which they find themselves and not to be caught up in the statistics.

Mr. Darman, the Director of OMB, last weekend, on a TV show really downplayed the seriousness of the economic situation in which we find ourselves. He contended that the recession was over. That is consistent with the siren song that he has been singing all along, that this is a short and shallow recession. Of oourse, nothing is further from the case.

This recession has been longer than any postwar recession with the exception of the recession in 1974–75 and the recession in 1981–82, which was the worst recession since the Great Depression. Other than those two recessions, which ran for 16 months, this recession—which is now going into its 14th month—is the longest that we have had in the postwar period.

But we should set clearly before our people, how American security requires us to promote cooperative international efforts to invest in democracy in the former Soviet Republics and in Eastern Europe.

If we, who are blessed with having only to face voters—we, who have never known the terror of military coups and knocks on our doors at night by the KGB—will show even one-hundredth of the courage shown by Eastern European leaders such as Imre Nagy and Walesa and Havel and Landsbergis, we will help assure that the fragile seeds of democracy will flower on the soil of former Soviet Republics and Eastern Europe.

Such an International Investment for Democracy will truly reap a harvest of peace and economic growth for our children and the children of the world.

Mr. President, I thank the Chair. I yield the floor. I thank my dear friend from Mississippi for his patience.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Mississippi [Mr. COCHRAN].

Mr. COCHRAN. Mr. President, may I inquire if the period for morning business was set to expire at 12:30?

The ACTING PRESIDENT pro tempore. The Chair advises that the Senator is correct.

EXTENSION OF MORNING BUSINESS

Mr. COCHRAN. Mr. President, I ask unanimous consent that the period for morning business be extended for 3 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

JAMES P. COLEMAN, 1914-91

Mr. COCHRAN. Mr. President, my State of Mississippi is mourning the death of former Gov. James P. Coleman. He died September 28 from the effects of a stroke he had suffered last December.

He was one of the most gifted leaders our State has ever produced. He had the common man's perspective, and the insight of the intellectual. He was a scholar, but he was not aloof. He loved to laugh. He was in every sense a truly outstanding individual.

With all those traits and a zestful willingness to be involved in community activities and government, he became one of our State's most successful public officials. His first job in Government was secretary to U.S. Congressman Aaron Ford of Mississippi in 1935. He made quite a name for himself in Washington when he was elected over Lyndon Johnson in a race for Speaker of the Little Congress, the organization of congressional staff members.

After graduating from George Washington University Law School in 1939, he was elected district attorney. The next year he served as a delegate to the Democratic National Convention.

His legal and political career, so begun, was to be filled with many successes and only a few setbacks.

He served with true distinction in every office he held: district attorney, circuit judge, member of the Mississippi Supreme Court, attorney general of the State of Mississippi, Governor of the State of Mississippi, member of the House of Representatives of the State of Mississippi, and member and chief judge of the U.S. Court of Appeals for the Fifth Circuit.

My sympathies go out to all of the members of Judge Coleman's family. Like them and many others, I feel a deep sense of loss. I will truly miss the enjoyable and enriching visits with Judge Coleman in Ackerman, MS, and the benefits of his perceptive observations and his wise counsel.

Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DOLE. Mr. President, as I understand, the leader time was reserved.

The ACTING PRESIDENT pro tempore. The Senator is correct.

ANITA HILL

Mr. DOLE. Mr. President, I am certain a lot of us are concerned about weekend allegations. And I have been in the cloakroom listening for about 25 minutes to the press conference being held by Anita Hill, who apparently gave the Judiciary Committee an affidavit, which somehow was leaked to the press—and I do not want to question her credibility either way. But I think there are a number of questions she is raising in the press conference that ought to be at least investigated.

That is, she keeps talking about the Senate or them or the Judiciary Committee, but never identifies who she has been working with in the Judiciary Committee. She said she was contacted by the committee. Well, I am sure the whole committee did not contact her. Somebody on the committee contacted her. Somebody on the committee has been driving her to this result.

I would hope that we would find out, with all of the interest in the press in this weekend allegation, precisely who stimulated the effort in the first place; and how long they had known Anita Hill; if they had gone to law school with her; some say what committee they may be on in the Senate; whether the Committee on the Judiciary or some other committee; and what precisely they did and who leaked the affidavit over the weekend.

I think many of us feel the vote was postponed until Tuesday so there would be a weekend revelation. We are not totally naive in this body. So it came as no great surprise that on late I guess Saturday, or whenever the first information came over national public radio because we were aware of this; Senator MITCHELL and I had been briefed by Senators BIDEN and THURMOND.

But I think with all the emphasis being on what Anita Hill—again I do not question her credibility one way or the other, nor her integrity. Nor do I question Clarence Thomas' integrity. It just seems to me if we are going to get to the bottom of this and have all the facts—for there is no one who would not like to have the facts—we ought to find out who is driving this effort. Who is behind it? Why was she contacted? Why was she contacted again? Why was the affidavit leaked? Who has been involved in the investigation?

She keeps talking about "them." Who is "them"? I do not think it is Senator BIDEN. I do not think it is Senator THURMOND. "Them" must be somebody either in the Judiciary Committee or someone in the Senate.

So we need to find out what she means when she refers to the Senate—the "Senate Judiciary Committee," "them," "staff"? What precisely took place in all these conversations and what was she advised to do by certain staff people or anybody else? Maybe if it is a Senator, that is something else. So I hope that information might be forthcoming as well.

Mr. President, I yield the floor. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. HATCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

A STEP IN THE RIGHT DIRECTION

Mr. DECONCINI. Mr. President, 11 days ago, President Bush demonstrated that every now and then he is able to grasp what he has referred to as "the vision thing." In so doing, he backed this country—and indeed the world—one step further away from the nuclear abyss. I congratulate him for his boldness and for his leadership. He took a step that needed to be taken. Indeed, his bold gesture of last week has been met and matched by President Gorbachev's equally courageous announcement of last Saturday night. Perhaps the cynics are right—only Nixon could open the doors to China.

NIHAN, who has kept the flame lit here and who has made the comments he has. And I wonder—given the cruelty, the baseness, the vileness, the obscenity, the real obscenity of holding hostages—I wonder what the hostage holders think they could gain by it. Because our country, a great and powerful and good nation, is not going to be brought to its knees by this. Rather, we are going to ask what sort of people are these?

Mr. President, I was not going to speak on this issue today. I am planning to speak on another one.

But I just wish to express my appreciation and my admiration for the distinguished Senator from New York. If, indeed, we are to be the conscience of the Nation, he has stepped forward in times when that voice of conscience has not been heard and has been that voice for all of us. So I salute my good friend and good neighbor.

Mr. MOYNIHAN. I thank my gallant friend and neighbor.

Mr. LEAHY. Mr. President, I wish to speak on another matter.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. The Chair reminds the Senator if he wishes to speak, the period for morning business under the previous order extends until 10 a.m., and Senators are permitted to speak therein. The Senator is recognized.

NOMINATION OF CLARENCE THOMAS

Mr. LEAHY. Mr. President, I wish to speak, again, on the matter of Judge Clarence Thomas' nomination to the Supreme Court. I have spoken on this issue on other occasions on the floor and before the Judiciary Committee.

Although I reached my decision to oppose Judge Thomas' nomination for other reasons, we all know Prof. Anita Hill has made some serious charges against him.

If the President, if Judge Thomas, if the Republican leadership wanted to clear up the issues raised by these charges, they would postpone the vote. There is a very easy way to postpone today's vote. All that has to be done is for Judge Thomas himself to say to the Republican leadership: "I do not object to a postponement. I want this matter cleared up. I want to appear under oath before the Judiciary Committee. I want Anita Hill to appear under oath before the Judiciary Committee," and let us hear this matter.

I think the Senate would be better if that happened. The American people would be better served if that happened. These are serious charges. Let us consider them not on the basis of press releases or other statements. Let us consider them on the basis of testimony from the two people who know the most about whether the charges are valid or not—Professor Hill and Judge Thomas. Let them appear before the Judiciary Committee under oath. And let this matter be settled.

But to do that, the Republican leadership must agree to a delay in the vote now scheduled for later today. I urge them, I urge the President, I urge Judge Thomas to ask for such a delay. As one Senator, I would eagerly and willingly agree to such a delay to let the matter be determined once and for all.

In fairness to Judge Thomas, in fairness to the Supreme Court, in fairness to the American people, the Republican leadership should allow the Senate to clear up this matter.

Our responsibility to advise and consent on Supreme Court nominations is a most solemn duty, and each Senator must approach it with reflection and care. Nominations to the Court bring together two branches of our Government to select the members of the third. If the Senate fails to take its advice and consent role seriously, it abdicates its duty to guarantee the independence of the courts and the rights of our citizens.

The Supreme Court is an institution that has dramatically shaped the course of our history. For more than two centuries, individual Americans have believed that the Supreme Court is the one place they could turn, the one place where their rights would be protected. Americans have looked upon the Court as the ultimate guarantor of their rights and liberties.

Members of that Court must possess, above all, a deep and unerring vision of the Constitution and the role that document plays in our society. A nominee must possess that vision and must bring it to bear on cases argued on the day he or she ascends to the highest court in the land.

Mr. President, after days of hearings, I cannot promise the people of Vermont that I am sure this nominee will protect their rights. Consequently, I cannot consent to Judge Thomas' nomination.

After reviewing his record and listening to Judge Thomas' testimony, I was left with too many unanswered questions. As I have discussed in detail in my previous statements, I was troubled by Judge Thomas' lack of expertise on constitutional issues, by his disturbing flight from his record, by his refusal to answer legitimate questions meaningfully, and by his unwillingness to clarify a troubling record on the fundamental right to privacy.

My first concern was that nothing in Judge Thomas' record or testimony suggests the level of professional distinction or constitutional grounding that a Supreme Court nominee ought to have. His legal, as distinguished from administrative, experience is limited, as is his judicial experience. It amounts to 1½ years on the court of appeals with scant consideration of constitutional issues. His speeches and writings have shown little in the way of analysis or scholarship.

My second concern was Judge Thomas' disturbing flight from his record. Instead of taking responsibility for the statements he made as Chairman of the Equal Employment Opportunity Commission, Judge Thomas asked the committee to weigh only his statements during the hearings in determining who the real Judge Thomas is.

My third concern was Judge Thomas' selective refusal to answer questions. I told him when the hearings began that I expected answers to fair questions. But he played it safe—whether on his own decision or the advice of others, I know not. But he declined to respond to many questions he should have answered. The decision not to tell us how he thinks was his and his alone. In choosing not to share his vision of the Constitution, Judge Thomas failed to provide the information that I need if I were to consent to his nomination.

But just as no one could compel Judge Thomas to answer the Judiciary Committee's questions, no one can compel me to vote for a nominee who has not satisfied his obligation to answer legitimate questions. He does not have to answer the questions if he does not want to. But I do not have to vote for him if he does not answer those questions, and I will not.

Nothing in his testimony before the committee alleviated my concerns about his record on privacy rights. I was particularly concerned by Judge Thomas' comments to me that he had never discussed Roe versus Wade. I do not know of a thoughtful lawyer in this country, not to mention a Federal judge or a nominee to the Supreme Court, who has not discussed that landmark decision. Some have raised questions about Judge Thomas' comments on this point, but the record speaks for itself. And I encourage all Senators to read that part of the record. The record speaks far more eloquently than I or any other Senator could on this floor.

The fundamental right to privacy is much more than the constitutional right of women to make very personal decisions about reproduction. It is the right of all of us to be free from Government intrusion into the most basic, private aspects of our lives. The public has a right to know where a nominee to the Supreme Court stands on the fundamental right to privacy, and I cannot consent to a nominee who refuses to explain his own record on this issue.

As I said before, Mr. President, I decided to vote against Judge Thomas for the reasons I have explained on the floor of the Senate (CONGRESSIONAL RECORD, September 24, 1991, S13479) for the reasons I have explained at the time of the vote in the Judiciary Com-

mittee (September 27, 1991) and for the reasons I have explained in the report of the Judiciary Committee, in which I added additional views (Senate Exec. Rept. 102–15).

Quite apart from any charges that have come out in the past few days, I feel strongly, as one U.S. Senator, that all of the reasons I have stated before are ample reasons to vote against Judge Thomas.

But, in the past few days, the public has heard allegations that previously were heard only by Senators who had either read an FBI report, or who had been briefed about the contents of the FBI report. These charges themselves are serious. They ought to be cleared up. For the good of our country, for the good of Judge Thomas, in fairness to the President who made the nomination, and especially for the good of the U.S. Supreme Court, let us clear them up.

That is why I call on the Republican leadership to ask for a delay, one that would be granted immediately if they did. Bring in Professor Hill, bring Judge Thomas back before the committee under oath, and ask them directly under oath: Are these charges true? Or are they false? Let 100 Senators listen to those answers, watch those answers, hear the content of those answere. Let every one of us make up our mind on that question prior to the time we vote.

The American people will be ill-served by rushing to judgment on a lifetime appointment to the Supreme Court. There are ample reasons for voting against Judge Thomas absent the issues ralsed by Professor Hill, but I do know that many, many Senators feel that these are issues that should be explored. If they wish to have further time, I, for one, am willing to give it to them. I am willing to stay all this week and all next week to do that. I am perfectly willing to agree to a delay. You know and I know and every Senator in this body knows that if Judge Thomas asked for such a delay to answer these charges, that delay would be granted by the U.S. Senate. If the Republican leadership of the U.S. Senate asked for such a delay, it also would be granted. It should be done. No one should have to vote for a lifetime appointment who is under this kind of a cloud. Let us hear these very serious charges discussed under oath and let us delay until we have had time to do so.

Mr. President, I yield to the Senator from New York.

The ACTING PRESIDENT pro tempore. The Senator from New York [Mr. MOYNIHAN] is recognized.

THE SUPREME COURT

Mr. MOYNIHAN. Mr. President, very much in the spirit in which the distinguished chairman of the Committee on Agriculture, Nutrition, and Forestry has spoken, I wish to speak this morning. I do not wish to delay him but simply to say that he spoke for the good of the Court and, I think, as he always will do, spoke for the good of the Senate as well, because the Court, that "least dangerous body," as the Framers put it, depends entirely on our wisdom and judgment in constituting the Court itself, just as the Nation depends on the Court's wisdom and judgment in making decisions about the Constitution. The Court is altogether passive as regards its membership. They only accept what we send, and the appointment is for life. I sometimes wish we were closer to them. I think when they served down the hall, one floor down and five doors away, we were a little closer. When they moved to that great temple across the park in 1935, we lost that touch with them and we do not realize how dependent they are on us. But there you are.

Mr. President, I would like to make some remarks which I had intended to make yesterday morning, in which I say a Supreme Court nomination brings out the fine qualities of the Senate, and for good reason. We are, above all things, a nation of laws. Law brought us into being, not some prehistoric mythic phenomenon like the babes of Rome, suckled by the wolf, whatever. Instead, this Nation arose from a declaration, as it was termed, the Declaration of Independenoe, as we call it. We stated that our independence followed from illegalities or improprieties on the part of the Government of Great Britain which had become for us insupportable and led us to invoke the right of separation to which "the laws of nature and nature's God" entitled us.

The Supreme Court, provided for in article III of the subsequent Constitution, is the embodiment of the authority of our laws. It is where we turn when their meaning is in dispute. More speoifically, it is where lawyere turn, in consequenoe of whioh a Supreme Court nomination is a matter of the liveliest interest to lawyers generally and hugely animating in a body such as the Senate, which now, as ever, is made up, for the most part, of members of the bar. Henoe, a certain diffidence arises on the part of a Senator such as I, not a lawyer, or at least a very certain diffidenoe on the part of this Senator.

Of the eight ourrent members of the Court, four have been confirmed since I have come to the Senate, one nomination was rejected, and now, of course, we have the nomination of Judge Thomas before us. So I am no stranger to these debates, albeit at times they are strange to me. I am not feigning innocence here.

Consider the matter of the right of privacy, which my able and learned friend from Vermont was just addressing, or the alleged right of privacy, assumed right of privacy, implioit right of privacy, and so it seems to me a baffling range of assertions. The nonlawyer asks what on Earth are the third and fourth amendments about if not privacy? One is told it is more oomplicated, and I think of that well-worn observation, "The question's much too wide, and much too deep, and much too hollow. And learned men on either side use arguments I cannot follow."

Still, it may be useful that there are some Membere of the Senate who are not lawyers. It may just be the least bit easier for the nonlawyer to keep in mind the argument of the idea central to our Constitution as most recently explicated by Harvey Mansfield, Jr., whioh is that the Constitution creates a government of limited powers. Not only because the powers of government ought to be limited, but also—and I think you can find this in Hamilton and in Madison—because in the nature of things that powers of government are limited. In the sense that, try as it will, there are limits to what governments can do. Witness Dr. Johnson on the subject—and I hope I am close to the original—that passage where he says: "How few of all the ills that human hearts endure that part which laws or kings can cause or oure."

The Court has sometimes brought on great turbulence, as in the Dred Scott decision. It has sometimes eased the transition of society from one era to another, as when Justice Stone casually suggested to Frances Perkins that a Social Security program premised on the taxing power would surely pass muster. It would take another generation to get Social Security. The Court can create consensus, as it did so wonderfully in Brown versus Board of Education. It can precipitate discord, as in Roe versus Wade. So still for what little it may be worth, I would judge that its prominence in political matters has, on the whole, diminished over the past generation. I stand ready to be correoted, of oourse—and equally this trend, if true, is subject to reversal without notice.

Mr. President, there is one thing the Court does do, a thing which the U.S. Constitution surely anticipates that it will, and that is to protect minorities against majorities. Of the three branches of Government, it is to the Court that we look for this all-important role.

PIPELINE SAFETY IMPROVEMENTS FOR MISSOURI AND THE NATION

Mr. DANFORTH. Mr. President, sinoe September 1988, there have been several serious pipeline accidents in Missouri and Kansas.

Similarities between some of the acoidents indicate that certain kinds of pipelline need more attention so potential dangers can be avoided. Specifically:

MORNING BUSINESS

Mr. MITCHELL. Mr. President, while the disoussions are continuing, to which I earlier replied, a number of Senators have requested the opportunity to speak on other matters. I, therefore, following consultation with the Republican leader, now ask unanimous consent that there be a period for morning business not to extend beyond the hour of 6:30 p.m., during which Senators be permitted to speak for up to 5 minutes each, during whioh time no other business be in order, and that at 6:30 I be recognized.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, the events of the past 3 days have been both depressing and disturbing.

A NEW LOW IN THE CONFIRMATION PROCESS

Mr. BOND. Mr. President, it is bad enough that one of the most solemn duties of the Senate—the power to confirm lifetime appointees to the Supreme Court—has, in recent years, deteriorated into a circus in whioh nominees are hauled before the Senate, and forced to defend everything they have said or done, every statement they have ever made, every word they have ever written, whether taken in context or not. And it is bad enough that nominees must endure the personal indignity of having their personal lives thrown open to public scrutiny, their families harassed, and their trash rooted through.

That is bad enough. But now we have reached a new low. Now it has become clear that a nominee must not only subject himself or herself to the ordeal already described, but the nominee must also be prepared to weather last-minute, orchestrated smear campaigns designed to manipulate publio opinion.

It is olear that the publication of the charges that have been raised by Ms. Hill was made for the purpose of scuttling Judge Thomas' nomination. The timing and handling of the publication is too much like the October surprise too often seen in political campaigns to be otherwise. It seems clear to me that his opponents saw that they had lost in their effort to defeat Judge Thomas on the issues, on his qualifications, or on his philosophical beliefs, so they decided to make one last-minute attempt to sling mud at him personally.

Certainly, the charges raised are serious—the kind that deserve thorough investigation. However, they have been considered, and they have been rejected. The Judiciary Committee investigators were aware of Ms. Hill's charges, and they gave them thorough consideration; and FBI investigators were called in, as well.

Committee members of both parties have said they were aware of the charges when they voted on the nomination. Not one of them, including those who are now calling for a delay in the vote, made any effort to delay the nomination in order to further investigate the charges. None even raised an objection. I have no doubt that they would have done so, had they believed it would have helped to scuttle the nomination.

What has changed?

I will tell you what has ohanged, Mr. President. One simple fact: Someone, in a clear violation of the rules of this body, leaked to the media the information contained in a confidential report. Once that happened, Judge Thomas' opponents saw one last opportunity to scuttle his nomination, and they jumped on it like a pack of wolves. It is a sickening spectacle.

I pause to ask a question of those leading the effort to delay the vote: If the vote is delayed, and if Judge Thomas is successful in defending himself against these charges, will this change your vote? I feel confident that the answer, for the most part, would be a resounding no.

Clarenoe Thomas has dedicated his life to public servioe. The people who know him, and I consider myself among them, will testify to his ability, his integrity, and his character. Through no apparent fault of his own, that integrity has now been stained with a blotch that he will never be able to erase, regardless of how hard he may try to prove his innocence. That, of course, is bad enough, but it does not even begin to address the burden his family has had to bear. That seems like an unfair payback for the almost 20 years of service he has given this Nation.

I wonder, Mr. President, what will be the ultimate impact of this sorry affair. Regardless of whether Judge Thomas is today confirmed as an Associate Justice of the U.S. Supreme Court, as I believe he should be, how many capable young men and women have been deterred from planned careers in public service because they are now convinced it is not worth the personal sacrifice, not worth the burden on the families? Hundreds? Thousands? If it is even one, it is a tragedy indeed.

Mr. President, Clarence Thomas has said that he is innocent of the charges against him. He has even signed a sworn affidavit to that effect. And now he has called for a delay in the vote in order to clear his name.

The charges were investigated by the Senate Judiciary Committee and the Federal Bureau of Investigation and neither saw fit to pursue them. If we now let this smear campaign go forward, we will be doing a great disservice to this Nation and to this man.

My senior colleague, on behalf of Judge Thomas, has called for a 48-hour delay in this vote. I do not think I need to reiterate the respect I have for JACK DANFORTH and for his intense feelings on this matter; and I compliment Judge Thomas for his desire to wait and to attempt to clear his name. It is just one more illustration of the depth of his character. But it is my view that this vote has been delayed long enough. I fail to see what we will learn from a 1- or 2-day delay. I fail to see what we can do beyond the investigations that have already taken place. I think we need to move to a vote.

In closing, I would just return to a point that the senior Senator from Missouri raised just a few moments ago on this floor. That is that the allegations that are before us today were raised through someone breaking the rules of this body—through someone releasing confidential information. I hope that the same people who are calling for an investigation of the charges raised by Ms. Hill will be just as vocal in calling for an investigation of who broke those rules so that proper action can be taken.

I yield the floor.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I ask unanimous consent to proceed for 5 minutes.

The PRESIDING OFFICER. Without objection, the Senator has the right to proceed for 5 minutes and the Senator is recognized for that amount of time.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. CRAIG. Mr. President, yesterday morning as I was preparing to come to this floor to offer remarks in behalf of Judge Clarence Thomas, I paused beoause of a news story that had been leaked over the weekend that was on the front page of every newspaper and on every morning talk show. I paused beoause I wanted to read the statement of Professor Hill. I paused because I felt it was necessary that I know as much as possible and knew as much as possible before I would come to the floor to delivery any kind of statment in behalf of Clarence Thomas and his candicacy.

So I began to request of the appropriate committee and its staff that I be made available all of the necessary documentation, and I was.

I spent the bulk of this morning reading the statement of Professor Hill and all of the chronological information that has been provided by the chairman of the committee and the ranking member of the committee to this entire body at this time.

After having read all of it, after having tried to understand it as best I could, feeling that as a freshman in this body who for the first time was in-

volved in the most important and legitimate constitutional responsibility of this body and that is to advise and consent that I had done what was fair and responsible and necessary, what were my findings?

My findings are that the information that the committee looked at and reviewed, that was ultimately leaked in a prohibition—against the committee rules—to the press has no smoking gun. It is of the kind that I can understand why the committee basically glanced at and reviewed in great extent and referred to it as not within the need of the committee to review any further.

It, therefore, is with no reservation that tonight I stand in support of Judge Thomas and his nomination. Why? Because I think like everyone else in this body in taking this responsibility seriously we recognize how important it is to weight all of the facts at hand, but I think it is also important that we understand the proper role and the kind of thing that has transpired here in the last good number of days, to try to put a dark cloud over this nomination and by some for all purposes to attempt to destroy the name and the character of the individual involved.

Alexander Hamilton in his remarks concerning the role of advice and consent of the Senate I think made a statement that fits this body so appropriately today, that it was as if he were in the gallery and in the body politio of this country watching us today and making this kind of a determination.

Let me quote:

> In every exercise of the power of appointing to offices by an assembly of men, we must expect to see a full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly. The choice which may at any time happen to be made under such circumstances will of course be the result either of a victory gained by one party over the other, or of a compromise between the parties. In either case, the intrinsic merit of the candidate will be too often out of sight.

Let me repeat, Mr. President: "the intrinsic merit of the candidate will be too often out of sight."

Mr. President, I am not sure there could be anything further from the truth today. The values of the man are forgotten for the moment. The values of the hours of testimony and all that were assembled to judge the oharacter of Clarence Thomas are forgotten for the moment. They are forgotten because of the spin of illegal information that has been leaked to the press in direot violation of the rules of this Senate.

I read it. We have all read it. Now we are debating and discussing the opportunity of those who were in the first instance and olearly in the second instance the enemies of this candidate as to whether he can survive and his nomination can survive, and we will offer on this floor a legitimate consideration.

Alexander Hamilton, you were profound in what you said. The candidate has been forgotten for the cause.

Mr. President, we have certainly seen the truth of Hamilton's observation in recent days—and the reason our Founders wisely chose to divide the responsibility for appointments, resting on the President the primary duty of nomination, and on the Senate the role of consenting to the nomination. Although the difference of opinion regarding this particular nomination does not fall along party lines, it certainly seems to reflect a desire by some in this body to force their personal ideological viewpoints onto the Court.

In an effort to return to the real subject before us, I am here to discuss my views on the "intrinsio merit of the candidate."

My own deliberations began with a presumption in favor of the President's nominee—which I think is appropriate in view of the Senate's constitutional role. I have carefully reviewed the accumulated evidence ooncerning Judge Thomas' competence, character and philosophy. I have not found anything to overcome my original presumption.

On the contrary, as I reviewed the record, I was struok by the fact that there is no real oontroversy as to the first two elements: competence and character. I am not a lawyer, but the vast majority of views collected from members of the bench and bar confirm that Judge Thomas is amply qualified to serve on the Supreme Court. I find it significant that his performance as a sitting judge has been described as distinguished, fairminded, independent, and intelligent.

As to his character, even those who oppose his confirmation agreed that Judge Thomas has demonstrated a high degree of integrity both personally and professionally. I have spoken with him myself and came away impressed. It's also worth noting that his demeanor throughout these proceedings was consistently dignified, discreet, and courteous—not an easy accomplishment for one pinned beneath the mioroscope of Senate and media sorutiny.

In short, there is no question this extraordinary man has the qualifications and the temperament we expect in those who serve on the highest court in the land.

That brings us to the question of philosophy. Mr. President, this has certainly been the question dominating the confirmation hearings. It is over this issue that we have seen the most intense display of the prejudices, ideologies and sentiments of individual Senators. It also seems to me this is the point where many in this body have, as Hamilton predicted, lost sight of the "intrinsic merits of the candiate"—and instead of focusing on Judge Thomas himself, have attempted to turn him into an instrument for enacting their social agenda.

Let me be frank about my own bias. I do not have a list of opinions for Judge Thomas to endorse. He doesn't have to recite a particular political catechism to satisfy me. Quite the contrary. What's most important to me is that a judge keeps his or her personal agenda out of the courtroom. I do not believe the benoh is the proper platform for political activism. I do believe judges should adhere to the law and to the Constitution. Judge Thomas' record and his testimony convince me that he understands these fundamental principles.

For these reasons, I intend to support the nomination of Judge Clarence Thomas as an Associate Justice of the U.S. Supreme Court.

The PRESIDING OFFICER. The time of the Senator has expired.

Who seeks recognition?

Under the previous order does the Senator desire to be recognized?

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk prooeeded to call the roll.

Mr. DODD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DODD. Are the Members speaking as if in morning business?

The PRESIDING OFFICER. The Senate is conducting morning business and the vote on the Thomas nomination has been thus delayed for 30 minutes.

Mr. DODD. Is it appropriate to discuss any matter?

The PRESIDING OFFICER. The Senator is correct. He may discuss any matter as in morning business.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. DODD. Mr. President, first let me speak on the issue involving the debate here ongoing regarding Judge Thomas. I have been one of those Members who had not declared his views on whether to vote for or against Judge Thomas. I planned to over the early part of the week, yesterday and today.

In light of events over the weekend I join with those who feel that a few days delay here is probably in the interest of everyone, including and most specifically Judge Thomas. I know that disappoints many of our colleagues, not the least of whom is the distinguished Senator from Missouri, who

has worked so diligently and so hard on this partioular effort.

Mr. President, I must say that in light of the allegations, and I certainly do not want to disagree at least in part with those who have suggested that how we got here is disastrous. I am terribly disappointed by what appears to be and may, in fact, be a violation of rules of law. The fact is we are here. How we got here is certalniy going to be the subject of some examination and discussion by appropriate authorities. But nonetheless, we are here whether we like it or not and the allegations are serious and need to be examined and explored.

I think one of the worse things we can do for Judge Thomas, even those like myself who are inclined quite frankly to be supportive of him, would be to have him leave here with confirmation and yet a cloud over his head hang with him the rest of his life. I do not think he deserves that.

My hope would be we would be able to achieve a couple days' delay on this and give the FBI and other appropriate authorities time to examine this issue, give our colleagues on the Judiciary Committee a ohanoe to examine these questions, and, of course, the crucible of examination and cross-examination are the best places to determine truth or falsity.

We are not going to end up with a Perry Mason deoision, in my view, probably, here at all, where the truth is going to leap out at us. I suspect that it is going to be still somewhat cloudy by the time this process is completed over the next several days. But, nonetheless, I think we will all be better off having gone through it.

I hope this does not become a precedent. Some have worried that it will become standard operating procedure. I have been here, Mr. President, for the consideration now of five nominations to the U.S. Supreme Court. This is the only such case I can recall where we have had last minute information coming to our attention that has caused some here to at least raise questions about whether or not we are able to move forward procedurally to be able to vote. I know to some there is a concern that this may end up in a flood of allegations in years to come. I hope that will not be the case. Certainly, nothing would be more harmful to this process if that were the case.

So, Mr. President, for what it is worth, this Member, while not having stated his absolute intention regarding this particular nomination, I do not want to play games with anyone. My intention was to be supportive of this nomination. And I will take the time at the appropriate time to explain why.

But in light of these allegations that have oome forward, given the credibility of the sources, at least at this point it seems to me in the interests of all of us—in the interest of the nominee, in the interest of the person making the charges, in the interest of this body, but most importantly in the interest of the American public—that we do our jobs and spend a few more days examining these questions and then reach a decision to vote for or against this nominee once we have completed that process.

So I hope that would be the case this evening as my colleagues consider this matter. I hope they take these remarks in the spirit in which they are offered.

I realize there may be some who are enjoying this and see this as some wonderful opportunity to undermine this nominee. I think most of my colleagues know me well enough to know that I would not be a party to that. Nor would I want to be a party to something that I would look back on and say, "but for a few more days, we might have satisfied ourselves and others regarding these questions that have been raised."

THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT AND AMENDMENTS OF 1980 AND 1985

Mr. DODD. Mr. President, I rise today to address an issue that not only impacts upon my State but on all of the States in this country. As you all know, the Low-Level Radioactive Waste Policy Act of 1980, as amended in 1985, required States, either separately or in oompacts of two or more, to dispose of commercial and some Federal low-level radioactive waste generated within their borders.

The States had three options upon enactment of this requirement. They could build a low-level radioactive waste facility; compact with other States for waste disposal—which also involves building a waste disposal facility in at least one of the compacting States—or contract to dispose of the waste outside of their State.

The above requirement was enacted in the face of the decisions made by the States of Washington, Nevada, and South Carolina to close their facilities to the Nation's waste. The amendments were also a response to the need to dispose of the 3.8 million cubic feet of low-level radioactive waste that was being produced each year.

Mr. President, I believe that the disposal of low-level radioactive waste is a national problem. Many questions have arisen concerning the cost effectiveness and wisdom of the acts' requirements, given the deoline in the total amount of waste produced nationally.

First, many have suggested that since that time, Congress' concerns have largely been obviated by technological advancements that have resulted in a two-thirds reduction, to about 1.1 million cubio feet, in the amount of low-level radioactive waste produced per year, as compared to 1981. As a result of this decline in the amount of low-level radioactive waste produced nationally, the economic and environmental need for 15 proposed new sites appears to be in question.

Second, there has been a great amount of debate in my State concerning the need for and the eoonomio viability of building and operating new low-level radioactive waste facilities. These concerns have been supported by the fact that there has also been some evidence that the sites in Connecticut and, indeed, several places nationwise were selected without regard to the environmental safety and soundness of the region, the effect on the people living in the affeoted towns, the geology of the region, including the proximity to water sources, or any meaningful citizen input.

Third, if the ourrent site proposals move forward to construction and current estimates are correot, it will cost somewhere between $40 million and $100 million to build each site and an additional $20 million each year to operate them. In all cases, revenue to pay these oosts will come direotly from the tipping fees of waste disposed at the facilities. Those fees, which are currently about $40 per cubic foot, are estimated to rise to between $400 and $700 per cubic foot, and you can believe that these additional costs will be borne by the taxpayer. I ask, of course, as many would, can the taxpayer afford this additional burden?

Finally, the States of Texas, Massachusetts, North Carolina, Michigan, New York, Maine, New Jersey, and Connecticut are all behind the January 1, 1996, deadline for the disposal of low-level radioactive waste. Additionally, the State of Michigan had been selected as the host State for the Midwest Compact. However, Michigan falled to find a suitable site for that faoility. Ohio has taken over the responsibility of being the host State for the Midwest Compact.

This change has retarded the siting proooss for, and the actual disposal of, waste in the seven-State Midwest Compact, which accounts for 11 percent of the national total. This, in effect, means that at least 18 States accounting for more than 31 percent of the national total have found the congressionally imposed deadlines impossible to meet and will therefore be required to find alternatives, possibly environmentally hazardous ones, to their own disposal problems.

In the light of these conoerns, I feel that a comprehensive GAO Study examining the economic and environmental costs of building the proposed facilities is needed.

I have, therefore, asked the GAO to address these considerations and others in a report which will analyze the oost/feasibility and environmental concerns with regard to proposed low-level ra-

dioactive waste facilities, both on a national level and in my State.

It is my hope that this report will shed some light on this troubling issue.

Mr. President, I hope that our colleagues on the appropriate committees that deal with this matter would be willing to take a look at this issue. It is one that is particularly important to several communities in the State of Connecticut. But I believe as we look across the States, there are a number of other States facing this problem. We should look at this rather than rush forward and demand environmentally unsound policies here. I think that would be a tragic mistake.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. KERREY. Mr. President, I rise to explain my decision to vote against the nomination of Judge Clarence Thomas to be an Associate Justice of the U.S. Supreme Court.

First, Mr. President, I believe it is a serious mistake not to delay a few days to allow Senators to review the recently disclosed allegation of sexual harassment against Judge Thomas. Although the details of this incident have been available to the Judiciary Committee for some time, for the majority of the body, the alleged incident is new information.

Sexual harassment is a serious and pernicious workplace menace. As a body composed of 98 men we cannot afford to project to Americans any hint that we regard it as a frivolous matter. Refusing to delay this vote—particularly given our sluggishness on other matters of the day—sends just such a signal.

In particular, I regret that the White House has chosen to use language that implies political motivation in bring these charges to light shortly before the vote on the nomination. This defensiveness does not add to the public's sense of confidence that we have given full consideration to the facts. Failure to review these allegations thoroughly could permanently taint Judge Thomas' reputation by giving the appearance of trivializing any charge of sexual harrassment.

On the overall question of Judge Thomas' nomination, my reason for voting against Judge Thomas is simple: I do not have confidence that he will be a good Justice. I began with a desire and a preference to vote to confirm. However, as the hearings proceeded, my confidence deteriorated.

I lost confidence in his capacity to make the serious, society-changing judgments of the U.S. Supreme Court when I heard him say he did not remember ever having an argument or a discussion of the 1973 Supreme Court decision in Roe versus Wade. I lost confidence when I heard him reverse himself on a number of previously articulated positions. I lost confidence when I heard his struggle to articulate a clear and convincing judicial philosophy and when he appeared confused about the meaning of important constitutional cases.

Although I have faced this decision on only one previous occasion in the U.S. Senate, I have interviewed and appointed many judges while serving as Governor of Nebraska. In every case the question I tried to answer was: Did I believe the individual had the capacity to formulate and declare judgments that were clear, independent, consistent, and fair. In the case of Judge Thomas, I reluctantly conclude that the answer is no.

A U.S. Supreme Court Justice must be strong. As H.L. Mencken once observed, justice is more difficult to bear than injustice. An Associate Justice must be conscious of the tension between our individual passion to secure the blessings of liberty and the collective need for domestic tranquility. We have made great progress in America toward both of these goals and cannot afford to retreat. In the end, I do not have the confidence that Judge Thomas can do the job according to the standards I believe we should have for the U.S. Supreme Court. I am concerned that he would not maintain the necessary independence of judgment. I am concerned he would consider overturning established judicial precedent that would be detrimental to the rights of the individual.

I conclude, after most thoughtful study, that Judge Thomas has not demonstrated the capacity to adjudicate competently and fairly the profound constitutional issues which place an awesome responsibility on the Supreme Court.

NOMINATION OF JUDGE CLARENCE THOMAS

Mr. LAUTENBERG. Mr. President, I rise to join in calling for a delay in the vote on the nomination of Judge Clarence Thomas, to allow for a full examination of the charge made that Judge Thomas engaged in unlawful sexual harassment at the Department of Education and at the EEOC.

I have already stated my intention to vote against the nomination—on the basis of the judge's record and views on constitutional rights.

Yet, for those Members who have yet to decide how they will vote, and for those Members who may change their mind in light of this new evidence—there should be an opportunity to review these most serious allegations of sexual harassment by Judge Thomas.

But, Mr. President, even if not one vote were changed, even if the ultimate result to confirm Judge Thomas were unchanged, the Senate should still review these charges.

It should review these charges for the sake of the Senate. For the sake of the Court. And for the sake of the public.

What message do we send about the Senate, if we rush headlong into a vote, brushing aside charges of this magnitude? We send a message that the Senate is unconcerned about possible violations of law by those who hold high office. We send a message specific to the nature of the allegations—the Senate does not take seriously a charge of sexual harassment.

It is our duty to advise and consent. It is our duty to carefully consider a nominee's fitness.

Mr. President, if we fail to fully air these charges, we would bring harm not only to the Senate. We would bring harm to the Supreme Court itself.

We are about to vote on the nomination of an individual to hold a lifetime appointment to the highest court in the land. The Supreme Court is the ultimate arbiter of Americans' rights. Its decisions have profound impact on our lives. Many of the issues before the Court are hotly debated. Its decisions are controversial.

Yet, the Court commands public respect for its rulings in part by drawing from a reservoir of public respect for the integrity and impartiality of its members and the fairness of its process.

Mr. President, we should not allow that reservoir to be siphoned off by unending questions and doubts about the integrity of one of its members. These charges raise serious questions about not only Judge Thomas' personal qualifications, but his impartiality to rule on cases involving sexual discrimination and harassment.

Mr. President, we do not know the facts of the matter.

Before the Senate votes, we should satisfy ourselves and the public that we have done our utmost to find the facts.

For these reasons, I believe the vote on the nomination of Judge Thomas should be delayed.

IN OPPOSITION TO THE NOMINATION OF JUDGE CLARENCE THOMAS TO THE SUPREME COURT

Mr. AKAKA. Mr. President, the Senate is expected to vote soon on Judge Thomas' confirmation. However, with the weekend revelation that a former aid to Judge Thomas has alleged sexual harassment against this Supreme Court nominee, I strongly believe it would be imprudent to proceed with the scheduled vote.

The charges levied against Clarence Thomas are serious and demand a full review if the Senate is to properly discharge its responsibility under the Constitution. I saw the FBI report on Professor Hill and Judge Thomas' statements only this morning and do

not believe that all of my colleagues have had the opportunity to assess this matter fully.

Last week I announced my opposition to this nomination based on my concerns that Judge Thomas would not adequately protect basic constitutional guarantees that previous Supreme Courts have affirmed. Despite my earlier position, my request to delay this vote is not an action that I take lightly.

Some Members have inferred that Professor Hill's allegations are wrongly motivated. I don't believe this is the case. I closely watched her news conferenoe yesterday and witnessed her pain as she defended herself—which is exactly why women are so reluctant to talk about sexual harassment.

The American people should be concerned if the Senate fails to fully review this matter. Sexual harassment is an extremely serious issue, governed by Federal and State laws which the Supreme Court is called on from time to time to interpret. It would be wrong to vote today without a thorough review of these allegations.

Mr. President, the best interests of the American people will not be served if the Senate votes on this confirmation today. The most responsible course would be to postpone today's vote so that Judge Thomas and Professor Hill can appear before the Judiciary Committee to respond under oath to these allegations so that this matter can be dealt with in a fair and open manner. I would also urge that questions be limited to these allegations.

I urge my colleagues to join me in seeking a postponement of this vote.

CHARGES OF SEXUAL HARASSMENT BY JUDGE CLARENCE THOMAS

Mr. HARKIN. Mr. President, I urge my colleagues to delay today's scheduled vote on the nomination of Judge Clarence Thomas to the Supreme Court.

Over the last few days, questions have been raised about allegations of sexual harassment by Clarence Thomas against Prof. Anita Hill, who was his assistant at the time of the incidents. Judge Thomas has denied these allegations. I am not prepared to judge the truth of these allegations, and I submit that no Senator can make a judgment on these issues based on the information we have before us. That is preoisely why the Senate must put off this vote, to allow time for these allegations to be fully investigated.

I have said before that the responsibility placed on the Senate to advise and consent on nominations to the Supreme Court is something I take very seriously. I believe all Senators do. And I do not think it is unreasonable to take a few more days to carefully consider this issue before voting to put a man on the Supreme Court who will likely serve for the next 40 years.

My position on this nomination is quite olear. I decided to oppose this nomination before these allegations became public, based on Judge Thomas' record and statements before the Judiciary Committee. But others have indicated that this question will play an important part in their decision process, and I believe that we must give each Senator the time to make his or her decision.

Finally, the charged partisan atmosphere in the Senate of the last two days is hardly conducive to such an important vote. Nothing about this nomination demands immediate action. The Senate should not be rushed to judgment on so significant a decision as the nomination of a Justice to the Supreme Court, just to satisfy a more procedural deadline. I urge a delay in this vote.

THOMAS NOMINATION

Mr. RIEGLE. Mr. President, when Clarence Thomas' nomination to the Supreme Court was first announced, I publicly expressed deep concern at that time with reference to his very troubled tenure at the Equal Employment Opportunity Commission.

In the months since, my ooncerns have deepened—and I do not believe Mr. Thomas should receive lifetime appointment to the Supreme Court.

As the American Bar Association has formally indicated after a full evaluation of Mr. Thomas's legal career, he would bring only the minimum legal qualification to the highest court in our land. I cannot find a single highly distinguishing aspect in Mr. Thomas' modest legal career that would warrant his serious consideration for the Supreme Court.

In a Nation of some 250 million citizens, the 9 lifetime appointments on the Supreme Court ought to go to persons with truly exceptional legal talent and accomplishments. They are starkly absent in this case.

Assisted as he was by affirmative action efforts in his impressive climb from poverty—he has, to his credit, fully used those opportunities to advance himself to his present situation. In light of these facts, one wonders at his reluctance to see similar opportunities afforded to others, when they were so important to his own personal advancement.

Also very troubling to me was the way he flatly disavowed his own strongly stated and recent positions on various important issue when he testified before the Judiciary Committee. His sudden changes in opinion on these matters in the committee hearings were not oonvincing and did not provide a coherent body of well articulated legal reasoning one would expeot of a Supreme Court Justice.

I reached the judgment to oppose Judge Thomas prior to learning of the statement made by Prof. Anita Hill. In light of this matter, I feel that more time must properly be taken to assess her assertions and Mr. Thomas' response. Many Michigan citizens have expressed this view to me today, including Mrs. Helen W. Milliken.

If he were to be confirmed, and if Judge Thomas were to serve until the same age as Thurgood Marshall, he would serve on the Supreme Court until the year 2031. We must take whatever time is necessary to resolve all outetanding issues—before making a decision that may well bind the country for the 40 years.

THE NOMINATION OF JUDGE CLARENCE THOMAS

Mr. SYMMS. Mr. President, I am sad that we are here at this hour and that we have not already confirmed Judge Clarence Thomas to be an Associate Justice of the Supreme Court. It saddens me.

Mr. President, I have to say that you have to hand it to Clarence Thomas' Democratio opponents for pulling the last gasp effort out over the weekend to try to in some way disoredit him or set this vote off or delay it or whatever happens, no matter who gets hurt in the orossfire—his son, himself, his wife, his former wife, his mother, his sister, whoever gets hurt in the crossfire—with absolute utter disregard for the people, the human beings, and the tragedy that goes with this kind of an inoident. But I am reminded of a quote which was made by one of the greatest philosophers to have lived in the 20th century, and I want to give the quote first before I attribute who made the statement.

The first point was that "In any conflict"—and this will just take a minute or so, Mr. President, and I hope my colleagues will think this through and those others that are interested. But "In any oonflict between two people—or two groups—who hold the same basio prinoiples, it is the more oonsistent one who wins" in the long run, in the discussion, in the war of ideals, or whatever the conflict.

In any collaboration between two men—or two groups—who hold different basic principles, it is the more evil or irrational one who wins.

The third point is, "When opposite basio principles are olearly and openly defined, it works to the advantage of the rational side; when they are not clearly defined but are hidden or evaded, it works to the advantage of the irrational side."

I was moved by the comments of my oolleague from Idaho, Senator CRAIG, about what Alexander Hamilton said about this 200 years ago. And it reminds me, it is the same point that Ayn Rand made in the quotes that I

just gave to my colleagues in the Senate.

When opposite basic principles are clearly and openly defined, it works to the advantage of the rational side: when they are not clearly defined but are hidden or evaded, it works to the advantage of the irrational side.

Now here, in the world's most deliberative body, we have gone through the entire process, Mr. President, with the Judiciary Committee; we have had 100 days; this man has been dissected, literally every part of his life, by the Senate Judiciary Committee. And now at the last hour, the vote is being delayed because of a sourrilous attempt to discredit this fine man.

I know Clarence Thomas. I have known him for 10 years. I commend my colleague from Missouri, Senator DANFORTH, for the job he has done. And I am sorry that every Senator did not hear the eloquent remarks of the Senator from Missouri.

I am sorry that every Senator did not hear the eloquent remarks of the Senator from Missouri. I agree with the Senator from Missouri, Mr. President. I think it is sad if we have to set this vote off. It is not a credit to this institution. It saddens me. It is not a credit to any Member of the Senate to see this vote set off. We have been through the process.

Of course, that call is not mine to make as to whether or not we should put off the vote. And if people can easily say I was for him but now I will vote against him because of these new allegations, it is a sad day—that a violation of Senate rules is what seems to be driving the operation here, driving the Senate to set aside this vote, because of fear.

Senator DOLE has made it very clear. We only have 41 votes that we can assure we have from this side of the aisle. We have to have some help from the other side of the aisle.

The PRESIDING OFFICER. The time for morning business has expired.

Mr. SYMMS. Mr. President, I yield the floor.

Several Senators addressed the Chair.

Mr. MITCHELL. Mr. President, I ask unanimous oonsent that the current status as described in the previous unanimous-consent agreement continue until 7 p.m., at which time I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered. The vote on the Thomas nomination is thus postponed. At 7 p.m. the majority leader will be recognized.

The Senator from California.

THE SEXUAL HARASSMENT CHARGES

Mr. CRANSTON. Mr. President, I have been appalled at the prospect that the Senate would proceed to vote on the nomination of Clarence Thomas without reconvening the Judiciary Committee to hear the very serious allegations whioh have been made by Professor Hill. I am appalled at statements being made that these are not serious charges because they involve verbal, not physical abuse. I am appalled at these stunning admissions of a lack of sensitivity to the problem of sexual harassment. I am appalled by the vicious attacks upon Professor Hill which have been made on and off the Senate floor.

What has the majority of this body been saying to all the women who are subjected to sexual harassment; who have been, are now, or will be subjected to sexual harassment?

The Senator from North Dakota [Mr. CONRAD] so eloquently stated on this floor this morning:

Is it any wonder that women are hesitant to come forward when they are harassed, when they know that they can be subjected to this kind of abuse?

Both Professor Hill and Judge Thomas deserve the opportunity to respond under oath to the charges and countercharges that are being made. Judge Thomas and his supporters and the entire country ought to welcome the opportunity to have this matter thoroughly investigated.

But more important, the women of this Nation need to know that a majority of the 98 men who serve in the United States Senate are not trying to sweep this issue under the rug. What kind of a deliberative body is this institution if a majority is not willing to take the time necessary to resolve this issue in an appropriate way? How could American women help but read a refusal to investigate this matter as a statement that this issue is not important? How can any woman who has been subjected to sexual harassment in the workplace feel any confidence in elected officials who do not think these charges are important enough to delay a vote, by whatever time is necessary, until the facts can be ascertained?

Negotiations, as we all know, are now underway to decide when to vote. Those who were unwilling to put off the vote when they through they would win and put Judge Thomas on the Supreme Court were willing to put off the vote when it became, suddenly, apparent that they would lose if they forced the 6 p.m. vote. They had the power to force that vote at that time, since to do otherwise required the consent of every single Member of this body.

I want to pay tribute to those who intended to vote for Judge Thomas, for deciding to indicate they would vote otherwise if a vote was held now, at 6 p.m., before the matter was resolved.

Let me say that I hope we will not decide, as some of us have suggested, to vote on Friday. That does not give time to explore the whole issue. It does not guarantee we will get to the bottom of it before, once again, we would face a deadline.

I hope and I urge that the decision be postponed a bit longer than that, into the following week, to ensure that there is time to understand what we are doing before we do it. This is too important a matter to rush to judgment.

Judge Thomas, if confirmed, might well serve on the Supreme Court for 40 years or more. We should know what we are doing in regard to this nomination before we do it.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Maine.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. REID). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WELLSTONE). Without objeotion, it is so ordered.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the ourrent status continue until 7:15 p.m. at which time I be recognized.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative olerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum oall be rescinded.

The PRESIDING OFFICER (Mr. BREAUX). Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I am going to yield momentarily to the distinguished Republican leader who will make a unanimous-consent request, following whioh I will make a unanimous-consent request, following which there will be statements of explanation by myself, the Republican leader, the chairman of the Senate Judiciary Committee, and the ranking member, Senator DANFORTH, and others who may wish to address the subject.

Mr. President, I yield to the distinguished Republican leader.

UNANIMOUS-CONSENT REQUEST

Mr. DOLE. Mr. President, I thank the majority leader.

Mr. President, I am going to make a unanimous-consent request. I ask as if in morning business that the vote on the Thomas nomination occur at 6 p.m. on this Friday, October 11.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. MITCHELL. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard to the unanimous-consent request.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, I now ask unanimous consent as in executive session that the vote on the Thomas nomination previously set for 6 p.m. this evening occur at 6 p.m. on Tuesday, October 15, and that the cloture vote on the motion to proceed to S. 1745, the civil rights bill, be vitiated.

Mr. DOLE addressed the chair.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. DOLE. Reserving the right to object.

Mr. BROWN. Reserving the right to object.

Mr. DOLE. Mr. President, I reserve the right to object.

Mr. President, I think it is fair to state at this time we have had nearly 4 hours of discussion—the majority leader, myself, other members of the Judiciary Committee, and Senator DANFORTH. And after all this discussion, after all the detailed discussion we have had, it seems to me that notwithstanding my preference of voting on Friday, it is not going to happen. Tuesday would be the earliest time and, therefore, I withdraw my reservation.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

SPECIAL COUNSEL

Mr. BROWN. Reserving the right to object, Mr. President, I will not object, but I do feel it is appropriate at this point to point out that there clearly has been a violation of Senate rules in the procedures involving this nomination.

I have drafted a prepared resolution that calls for a special counsel to investigate those violations. I have discussed it with the majority leader, and he has appropriately requested time to review the matter before he makes a decision on that.

I ask unanimous consent to enter this resolution in the RECORD, and serve notice that it is my intention to pursue this matter at the appropriate time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. RES.—

Whereas Article II, section 2 of the Constitution requires the President to nominate, with the advice and consent of the Senate, Justices of the Supreme Court;

Whereas in carrying out its constitutional responsibility to advise the President, the Senate wishes to encourage appointment of the most competent individuals to serve as Supreme Court Justices;

Whereas the Senate of the United States wishes to advise the President and to confirm or not confirm Presidential nominees to the Supreme Court based on their merits;

Whereas an unbiased evaluation by the Senate of a nominee's competence to serve on the Supreme Court requires the compilation of complete information about the qualifications of the nominee;

Whereas this may include personal or potentially sensitive information about the nominee;

Whereas it is appropriate that the confidentiality of certain information be maintained to preserve the integrity of the senate confirmation process;

Whereas allegations have been made of the unauthorized disclosure of a confidential Senate committee report during the consideration of the nomination of the Clarence Thomas to be an Associate Justice of the Supreme Court;

Whereas the unauthorized release of confidential information has potentially compromised the confirmation process; and

Whereas the unauthorized release of such confidential information is a violation of the Standing Rules of the Senate that provide that any Senator or officer of the Senate who shall disclose the secret or confidential business or proceedings of the Senate shall be liable, if a Senator, to suffer expulsion from the body, and if an officer, to dismissal from the service of the Senate, and to punishment for contempt: Now, therefore, be it

Resolved, That (a) the Majority Leader, in consultation with the Minority Leader, shall appoint a special counsel to investigate the unauthorized disclosure of a confidential Senate committee report during the consideration of the Clarence Thomas nomination to be an Associate Justice of the Supreme Court. The special counsel shall consider whether any Member, officer, or employee of the Senate committed any of the activities prohibited in paragraph 5 of rule XXIX of the Standing Rules of the Senate, or any other rules, regulations, or laws of the United States.

(b) The special counsel shall report the findings and conclusions of the investigation to the Senate not later than 30 days after the date of adoption of this resolution.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the majority leader? Hearing none, it is so ordered.

Mr. MITCHELL. Mr. President, I believe that the delay just agreed upon with respect to the vote on this nomination is important and appropriate. The events of the past weekend have created a circumstance in which many Senators believe and have stated that there should be a delay in the vote so that the issues now publicly raised can be publicly and fairly resolved. I share that view. I believe there should be a delay.

I believe that it is necessary, in fairness to all concerned. It is important that Senators and the American people understand how we have come to this situation.

On the evening of September 25, 2 weeks ago tomorrow, Senator BIDEN, the chairman of the Judiciary Committee, and Senator THURMOND, the ranking Republican member of the committee, requested a meeting with the minority leader, Senator DOLE, and myself, the majority leader. In that meeting, they described to us the nature of the statement made by Prof. Anita Hill and Judge Thomas' denial of those assertions.

Professor Hill had requested two things:

First, that the information she provided in the form of a sworn statement be made available to Members of the Senate Judiciary Committee.

Second, that it not be made available to anyone else because of her concern for the protection of her identity.

Senator BIDEN indicated to me that he intended to comply with that request; that he would make the information available to the Democratic members of the committee, and would not make it available beyond that, in accordance with Professor Hill's request.

Two days later, the committee voted and recommended that the matter be sent to the Senate. The vote in the committee was 7 to 7. To my knowledge, at that time, there had been compliance with Professor Hill's request, both with respect to making the information available to members of the committee prior to their vote, and not making it available beyond that. Following that, the committee acted.

I then discussed the matter with Senator DOLE and with many other involved Senators. As a result of those discussions, I then proposed to the Senate that there be 4 days for debate on the nomination; those 4 days being last Thursday and Friday, yesterday and today, and that at 6 p.m. today, following 4 days of debate, the Senate vote on the nomination. That was approved by unanimous consent. Each of the 100 Senators agreed to that procedure. No one objected.

As we all know—but it bears repeating because there has been some misunderstanding among the American people—once the Senate has agreed to set a vote by unanimous consent, that is, with the approval of each and every one of the 100 Senators, the only way the Senate can change that time is with the agreement of each of the 100 Senators.

Last evening, and throughout the day today until just now, I have been discussing this matter with a number of Senators—Democrats and Republicans—in an effort to obtain an agreement on the best way to proceed in this matter. The contradictions between the statements of Professor Hill and Judge Thomas have not been resolved. Indeed, with the information now available to us, those conflicts cannot be resolved this evening, the time for which the vote was set under the unanimous-consent agreement.

The situation that confronted us, therefore, was that unless the Senate now agreed otherwise, we face the vote this evening on a nomination with serious and highly controversial and unresolved charges, and denials having been made publicly, simply because the Sen-

ate had previously agreed to set a vote at this time.

As I indicated earlier, in the Senate, when 100 Senators agreed to a time to vote, the only way in which that time can be changed is by the similar agreement of all 100 Senators. That has now occurred, and I believe it to have been an appropriate action. I believe the delay now approved is important to the integrity of the Senate, the integrity of the confirmation process, the integrity of the Supreme Court, and not least, the intregrity of those who find themselves deeply involved in this matter.

It is most unfortunate that we have been placed in this situation. But events which are unpredictable, unplanned, and unfortunate can and frequently do intervene and cause a change in the plans of human beings. That has now occurred in this matter, in my judgment.

For that reason, I believe the action we have taken to change the time of the scheduled vote until next Tuesday, and to give time for further inquiry into this matter by the Judiciary Committee, is an appropriate action.

I thank my colleagues for their oooperation in this matter. I thank all of those who have been involved in the discussions, including, of course, the distinguished Republican leader, the chairman, and ranking member of the Judiciary Committee, and all others.

Mr. President, if I might state that, in view of the agreement having been reached, there will be no further rollcall votes this evening.

I yield the floor, Mr. President.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I certainly do not quarrel with anything the majority leader said. I think it is accurate and factual and indicates what has happened today.

I think there are some who would have rolled the dice at 6 p.m. There were some who felt—some on my side of the aisle—that when the chips were down, there would be enough votes for oonfirmation this evening. But none of those who were making those statements were the nominee. So it seemed to me that it was a gamble that should not be taken.

In addition, there was a serious allegation, and notwithstanding our best efforts through affidavits, phone logs, and other things to take care of that allegation, still some questions remain.

I would certainly hope that people will not misinterpret or misjudge what we have just agreed to. I have heard some oomment that this means the nomination is in trouble. Some have already predicted its demise, but some are hopeful. I have enough faith in many of my oolleagues—in this case, on the other side of the aisle, I have talked to personally in the past several hours to Senators who are prepared to vote for Judge Thomas' confirmation, but who told me personally that they thought the matter should be further investigated. I am not certain that I disagree with them.

This is a very important vote. I have enough confidence in the judgment of the 16 to 18 Senators who have indicated they may support Judge Thomas on the Democratic side that, in my view, by agreeing to the extension—longer than we wanted—we have strengthened the case and the chance of this nomination.

Over the years, I have been a fairly good vote counter, and I could not put together 50 votes at 6 o'clock. As I said earlier, the bottom line in our business is how many votes do you have. If you do not have a majority, you do not have enough, and you are out of business.

I know the Senator from Delaware, Senator BIDEN, and the Senator from South Carolina, Senator THURMOND. and other members of the Judiciary Committee, and Senator DANFORTH, have been talking about the scope, when the hearings will start, how many witnesses may be called, the order of witnesses and all of those things that I think should be determined by the distinguished Senator from South Carolina and the distinguished Senator from Delaware, rather than the leadership. It is a Judiciary Committee determination.

Somebody asked, "What about next Tuesday at 6 o'clock?"

I think it is fair to say leaders hope that is it. This is it. If the investigation goes as everybody believes it will go, it probably will be it. We cannot be totally certain.

Finally, I would say that this is a test for Clarence Thomas, It is a test of his character. I believe he is up to the test. He has indicated as much to Senator DANFORTH who will be speaking in a moment or two.

But I would say to those, even those who are violently opposed to his nomination, that Clarence Thomas is a human being, too, and he has certain rights that should be protected, just as Miss Hill has certain rights that should be protected. As Clarence Thomas indicated earlier today, he wanted to clear his name. It is important to him. It is important to his mother. It is important to his sister. It is important to his family. It is important to people who came to testify on his behalf. It is important to us as an institution not to overreach but to make certain—as I have great confidence in the Senator from Delaware, the chairman of the committee—that he will be treated fairly, because he is the one who has been accused. He is the one who is on trial, in effect, between now and next Tuesday. Mind you, he has been on trial by some for 100 days.

So I just ask my colleagues, particularly those who have indicated they are favorably disposed to the nomination, to continue that open mind and that impression of Clarence Thomas.

As a Republican leader I have a couple of responsibilities. One is to make certain there is a fair disposition of this matter. When I say "a fair disposition," I mean fair to everyone, including the nominee. Sometimes the nominee is forgotten. I happen to think he is a decent person.

I guess from the standpoint of politics, to try to make certain that Clarence Thomas is confirmed. He is President Bush's nominee. We believe he deserves to be confirmed. We believe there should be bipartisan support, and I believe there will be bipartisan support. Without it, it is over.

So I thank the majority leader and I thank my colleagues on this side of the aisle who have been involved in the negotiations throughout the day. I think the best disposition of this matter is to have a vote on Friday. That is not going to happen. I think this is the next best way to dispose of this matter, and I am willing to stand here and predict, unless there is some bombshell out there that I have not heard about, that on next Tuesday Clarence Thomas will be confirmed by a good margin and by a bipartisan margin.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I would like to make a couple points if I may, and I will be brief.

For the last 2 days it has been a difficult time to get us to a point where we are tonight, with a unanimous-consent agreement, and that is that this vote be delayed so that we could further investigate this matter.

I want to make two points. It was not until Monday, September 23, after the hearing was over, which ended on Friday, September 20, that I was able to get permission from Professor Hill even to have the FBI look at this matter. We have honored and continued to honor every request Professor Hill made to me as chairman of the committee.

Understandably, this is an incredibly diffioult thing for her to do. September 12, which was the third day of the hearing, was the first time Professor Hill's concerns were made known to the committee and made known to me. From that point on it is understandable how difficult it was for Professor Hill to reach the point where she agreed to allow me to have the FBI investigate and the nominee be made aware of the charges.

At that point what happened was that, having honored her request, we continued to honor her request whioh was that no one in the U.S. Senate be made aware of her allegations beyond the members of the committee unless we were able to guarantee that her

name would never be mentioned, that no one would ever know, a guarantee that could not and I would add should not have been made. So, consequently, the committee was unable to move on any further with the investigation beyond what the FBI had done.

But that all changed on Monday when Professor Hill went public, authorizing, directly and indirectly, the committee and the Senate to look further into her allegations.

It is a difficult thing for Professor Hill and a difficult thing for the nominee and a difficult dilemma in balancing each of their rights. But the one point I want to make is the first balance that took place was the balance between the right of the institution to know and the right of Professor Hill to determine whether or not the institution should know. I took her charges seriously, as we did on the committee, but we also took her request not to have anyone outside the committee be aware of this seriously.

One of the reasons we spent so much time in conference these last 2 days is after she had gone public we continued to take the matter seriously and continued to work toward undoing the unanimous-consent request.

So, Mr. President, once we were given clearance, and now have been given clearance as of Monday, by Professor Hill to proceed, the Senate is going to do just that.

In consultation for many hours with the ranking Republican Member, with the leadership on the Republican side, as well as Senator DANFORTH, who has a keen interest in all of this, we have agreed upon a procedure that would allow the committee to begin possibly as early as Friday holding public hearings.

I want to make it clear to everyone involved in this: This will be public; all of it will be public, first. Second, people who say they have something to offer, and even those who do not say they have anything to offer but have spoken to this issue of the alleged harassment, will be subpoenaed by the committee because we are going to ventilate this subject to give both Professor Hill the opportunity to make her case in full and give the nominee his opportunity to state his defense in full.

It is my hope and expectation that a continued investigation and hearing can be completed and that we will—not my expectation—we will vote on Tuesday night at 6 o'clock.

Let me conclude by suggesting once again the nominee has the right to be confronted by his accusers. So any accusation against any nominee before any committee which I chair that is not able to be made public to the nominee will not be made known to the Senate unless the individuals wish to do it all by themselves. Then it is known to the nominee. It is not a star chamber. But, on the other hand, it is incredibly difficult, assuming for the moment that Professor Hill is telling the truth, in cases relating to harassment, in cases relating to sexual violence, in cases where women have been victimized—I have spent too many hours, had too many hearings, spent too much of my professional career dealing with that subject as chairman of the Judiciary Committee not to know that it is incredibly difficult for an alleged victim to come forward without worrying about whether they will be victimized by the system.

So it is explainable, in my view—it is not dispositive—that Professor Hill was unwilling to let me use her name or make the allegations known even to the nominee in the beginning, and to the Senate later. But it is not dispositive, absent the ability of the nominee to be able to come before the committee under oath and present his denial and any rebuttal that he wishes to present.

This is not going to be an easy hearing. This is not going to be easy to conduct. This is not going to be easy for the members of the committee, nor Professor Hill, nor the nominee. It is uncomfortable for everyone. But it must be done because we cannot fail to take seriously such a charge. But we cannot conclude the charge is correct without the evidence being presented and the nominee having an opportunity to rebut it.

So, Mr. President, I thank my colleagues for this time. I have deliberately remained silent on this subject for the last 2 days in an attempt to resolve our ability to conclude in public, in a hearing, this issue. We now have that agreement. I expect that the members of the committee, Democrat and Republican alike, will operate in good faith in an attempt to be able to give the nominee every opportunity to make his case on the issue and put forward a rebuttal.

But we are entitled to know. The allegation is serious. Harassment is serious, and it warrants us looking further into it.

I thank the Chair, and I thank my colleagues.

Mr. THURMOND. Mr. President, I hold in my hands an affidavit made today by Clarence Thomas in which he says:

I totally and unequivocally deny Anita Hill's allegations of my misconduct of any kind toward her, sexual or otherwise. These allegations are untrue.

Mr. President, in spite of this affidavit, also today Judge Clarence Thomas said that he would welcome an opportunity to go before the Judiciary Committee and explain any matter that is brought before the committee. That is one reason that this agreement has been reached.

Another reason is, some of the prominent Senators on the other side of the aisle feel that it would be helpful, those who are supporting Judge Thomas, if this delay is made. So for those two reasons this delay has been reached.

I am confident when the facts come out that Judge Thomas will be vindicated and will be confirmed on next Tuesday when we vote.

Mr. DANFORTH. Mr. President, I have some observations to make but before I make them I would like the attention of the chairman of the Judiciary Committee for a minute, if I could.

It is my understanding that the scope of the hearings will be limited; that it is not to be an open-ended review of everything anybody wants to say about Clarence Thomas. A specific charge has been made. The specific charge relates to harassment, and it is my understanding that harassment is to be the scope—and the only scope—of the hearing of the Judiciary Committee.

Mr. BIDEN. Mr. President, that is correct, to this extent: Any questions about Clarence Thomas' philosophy, any questions about Clarence Thomas' former rulings, any questions about Clarence Thomas' administrative capability are all irrelevant and off base. Any questions about his conduct in terms of whether or not he harassed this individual, Professor Hill, or any other individual, are relevant. They are relevant, as we discussed.

But it is the intention of the Chair to limit this scope to the conduct of the nominee, in particular as it relates to Professor Hill. But if—and I have no evidence of this, to make the point clear—in the scope of the investigation, the FBI and/or committee staff, or out of the blue, some credible person comes forward and says, "By the way, I was harassed," that is within bounds, assuming the person is credible. The majority and minority staff will interview that person.

There are none; there are none that I am aware of. But to make the point, if they did come forward, that would be relevant to the scope of the inquiry.

One of the issues—I will hit it right on point—one of the issues that is still out there that people are complaining about in the Senate and are wanting more information on is whether or not he withheld an opinion or did not withhold an opinion as a circuit court judge. That is not relevant to this hearing.

There are general parameters of what is relevant and not relevant. It relates to conduct and harassment and his behavior toward women, and harassing or not harassing.

Mr. DANFORTH. That is also my understanding. Sexual harassment, conduct toward employees, is the scope of this hearing.

Mr. BIDEN. The Senator asked me that in private, Mr. President, before. That is correct.

But just as we are not going to have testimony from outside witnesses what

constitutes or does not constitute harassment, whether for or against him, the issue of whether or not Clarence Thomas harassed as an employer or not as an employer, if such an allegation were made, would be relevant. It is not limited to whether or not there was an employee, because it goes to the issue.

There is no evidence of any of this, none that I am aware of. No one has come forward. But I do not want to mislead anybody.

As I said to the Senator in our meeting, if someone were to come forward, Miss X came forward, did not work for the nominee, and said, "By the way, I once was out with the nominee and the nominee did A, B, C, D to me, and harassed me, and did this and did that"—I do not even want to make up hypotheticals—and she were a credible witness, that would be credible testimony.

Mr. DANFORTH. Mr. President, it would be the view of this Senator, if the matter did not pertain to the charge or the category of charges made by Miss Hill, that it would not be.

Mr. BIDEN. I understand that, Mr. President. But the Senator understands, I knew his view, he knows my view.

Mr. DANFORTH. Mr. President, because I think there otherwise is going to be a fishing expedition all over the country, which is going to be going on now for the next week. I can see it coming: advertising, virtually, for people to come forward with whatever they want to dump on Clarence Thomas.

I think that there are going to be more and more demands on the chairman and the committee and on individual Senators to open this up so that anything anybody wants to bring about Clarence Thomas comes up again. If this is not limited to matters relating to this charge, when we have set aside a unanimous agreement for a vote at 6 o'clock tonight, then I think that is not what this Senator understands.

Mr. BIDEN. Mr. President, let me respond if I may. The Senator will recall, the Senator asked me this very same question in the presence of four or five of this Republican colleagues, as we were deciding whether or not we could reach agreement. The Senator from Delaware gave him the same answer I just gave him now. And, if the Senator wishes me to give the hypotheticals I gave then—I would rather not because people will say, "Why is he raising that hypothetical? Maybe that happened."

But the Senator knows what I just told him, and what I can continue to tell him, if he wishes, if he wants me to raise it——

Mr. DANFORTH. No, I think we understand each other.

Mr. BIDEN. All right.

Mr. DANFORTH. The chairman does not have to come up with a variety of titillating hypotheticals that never occurred.

But I think that we have an understanding. I simply wanted to point out that the chairman of the committee is going to exercise the power of the chairman in order to try to contain this particular inquiry that what is reasonably relevant to what is now before us.

Mr. BIDEN. That is correct.

Mr. DANFORTH. All right, I thank the chairman.

Mr. President, I do have some additional comments I would like to make.

First of all, I think that my leader, Senator DOLE, at one point in his comments said that the fair thing to do would be to extend this matter for some period of time. I want the Senate to know that in the view of this Senator, what is happening now is grossly unfair—grossly unfair to Clarence Thomas. What is fair, Mr. President, is the normal process of the U.S. Senate. What is fair is what each one of us has experienced when we reviewed FBI files of a whole variety of nominees that come before the Senate. We review those files and many of them contain various allegations against nominees. Many files have various statements, some of which related to sexual activity. When that happens we usually share it with other members of our committee quietly, secretly, discretely, try our best to reach a conclusion, and then have a vote in the committee and that is the end of it. That is the normal process of U.S. Senate, and it is fair.

Mr. President, that is not what has happened in this case. What happened in this case is that those of us who support the nomination of Clarence Thomas won the fight. We had the votes. Last Friday, last Saturday, we won committed votes of U.S. Senators and were heading to a vote on Tuesday. And we won.

And I can remember the great sense of relief that I had on Friday and Saturday. I knew about this particular charge. I knew that the FBI investigated this charge, that the investigation was made available to the majority leader, to the minority leader, to the members of the Judiciary Committee; that they were briefed on the FBI report, and that on the basis of that briefing they concluded that nothing more was to be done. They concluded on reading the FBI report, on reading the statement of Ms. Hill, they believed that nothing further had to be done. The time had come to vote.

So, they had the vote in the committee, and I am told by the chairman of the Judiciary Committee any member of the committee, as a matter of right, could have set that vote aside for a week. Nobody did it. They read the report and they agreed to a time certain, today at 6 p.m. for a vote on the floor of the Senate, knowing what was in that report.

Now, that is the normal process of the Senate. And had the normal process been followed, we would have voted 3 hours ago and Clarence Thomas would have been confirmed as an Associate Justice of the U.S. Supreme Court. That is how the Senate operates. And that is fair.

And what has happened, Mr. President, is not fair. What has happened is a violation of Senate rules because, failing to get the committee to take any further action on the basis of their review of the report, the FBI report was then leaked to the media. That is the factor left out by the presentation of the Senator from Delaware. It was leaked.

And, Mr. President, leaking an FBI file is a violation of Senate rules subjecting a Member of the Senate to expulsion from this body and subjecting a staff member to dismissal from the staff of the U.S. Senate. That is how serious leaking an FBI file is. It subjects a Member to dismissal, expulsion; it subjects a staff member to dismissal from the staff of the U.S. Senate.

This was leaked. And had it not been leaked we would have had the vote. But it was leaked and the furor erupted; it was the lead item on the evening news and it was the headline item in the newspapers. It was not Ms. Hill who did this. It was not Ms. Hill who was attempting to do in Clarence Thomas. It was not Ms. Hill who wanted to come forward, according to her own statements. It was somebody who had access to a file of the Federal Bureau of Investigation and who leaked that file. The normal process of the Senate was not followed and Clarence Thomas is being crucified.

Now, the majority leader says unplanned events have occurred. Mr. President, with all due respect to the majority leader—and I have great respect for him—that simply is not the case.

Oh, no, it is not the case. There is not anything unplanned about this. There is not anything unplanned about the campaign against Clarence Thomas. It is the most highly planned and orchestrated effort I have ever seen. It has involved who knows how many people.

The People for the American Way are even now calling up employees of the EEOC to get the dirt on Clarence Thomas. The leaking of an FBI file—that is not unplanned. It is planned. It is intentional. And it is wrong. And anybody who says it is fair to hold this over for another week—no, it is not fair. It would have been fair to have the vote at 6 tonight. That was what was fair. But leaking an FBI file, having been reviewed by the Democratic members of the Judiciary Committee and found by them not to warrant further action? That would have been fair. And it is not fair, not fair then to go peddling an FBI file to the media. And, Mr. President, lamentably, this is not the first time this has happened.

Remember Mr. Ryan? What was he? RTC? RTC chairman. Here was a man

who was a husband and a father and he made the mistake of saying in his FBI file that at one time he had used dope. That was leaked to the media. What did it do to him and his family?

But I guess that is the way we do things around here. Oh, I guess if we want to defeat somebody, we destroy them. No holds barred. What are rules of the Senate? Rules are made to be broken. Whoever disciplined the people who leaked Mr. Ryan's file? Whatever happened? Nothing. And what will happen in this case? Nothing. And the next time and the next time and the next time. It is not fair.

Mr. President, I want to make a few predictions. The first prediotion is this: That the next week is going to accomplish nothing good and much that is bad. The majority leader says that the confliots between the nominee and the complalning party will be resolved. They are not going to be resolved. They are not going to be resolved.

Oh, we will have a hearing. Both parties will testify under oath. One will say one thing, and one will say another thing. It is not going to be resolved. At the end of the hearing, people will either believe Judge Thomas or they will believe Ms. Hill or they will not believe either.

I bet nobody's mind is going to be changed because it is a question of credibility. So it is going to remain murky. It will not be resolved. It is going to be a field day for the interest groups, for the so-called leadership conference on civil rights, People for the American Way. Their American way is the way of lynching.

It is going to be a field day for all the groups ginning up all the phone oalls and all the pressure on Senators. It is going to be field day for the scurrilous little rumors. It is going to be a field day for people who slip the unmarked envelope over the transom or under the door. Oh, it is going to be a field day. Read all about it. Tune in tomorrow and every day for the next 7 days to get everything and anything that anybody wants to say about Clarence Thomas. Do you want to get your names in the paper? If you want to use your name or just slip it under the door.

I will predict something absolutely. I predict as a matter of certainty that 1 week from today there is going to be massive push to put off the vote. New charges have been made. New witnesses have been found, more people to be interviewed by the FBI. We have seen this before in this body. John Tower. There is not going to be any end to this. This is not going to be an effort that will dissipate the clouds. The clouds are going to be there. The attacks are going to be there. That will be in the next week.

Mr. President, I know what we are doing to Clarence Thomas because he is my friend. I will tell you, it does not take a great doctor of the soul to know how a human being is hurting. And at the end of this whole things, he is never going to be able to recover the reputation that he had before he went into this because it is not possible, because charges like this stiok. They stick. It is impossible to make the stain go away.

I know what we have done to Clarence Thomas. Not we, all of us. I know what we are doing by putting off the vote a week. I know what those who have leaked the FBI report have done to Clarence Thomas. And I guess if you are fighting a crusade, just like the crusaders of old, anything goes.

But, Mr. President, what are we doing to the country? What are we doing to this wonderful country? This is not advise and consent. This is slash and burn. What are we saying to future nominees? I spoke 2 nights ago to a person who now serves on the Supreme Court and this person said, "I wouldn't do it again."

So all of our nominees are going to be people who come from the mountains of New Hampshire or someplace or suckers. I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. MITCHELL. Mr. President, since the Senator from Missouri referred to me several times during his remarks, I feel it appropriate to respond with respect to those aspects in which he referred to me.

First, if there is any intention to create any implication that I participated in the plan involving the release of this document——

Mr. DANFORTH. No, none, absolutely none. I do not want to interrupt the majority leader. I want that understood, absolutely none. It has never crossed my mind.

Mr. MITCHELL. I thank my colleague for that clarification because I think that was the clear implication of his remarks.

Second, I did not say that this matter will be resolved next week. My exact words were, after saying that it has not been resolved were, and they are written down so I will repeat them, I believe our best option is to change the time of the schedule a vote and proceed as best we can to determine the truth and then make our judgments. The Senator misstated what I said with respect to the resolution of the vote.

Third, I think it should be stated, because it is not obvious from these remarks, that the agreement to delay the vote for 1 week was unanimous. Any Senator could have objeoted, including the Senator from Missouri. No Senator did object. Not the Senator from Missouri or others.

Fourth, with respeot to the predictions of what may or may not occur next week, the same situation will exist.

This vote will occur at 6 p.m. next Tuesday night unless there is a unanimous-consent agreement by every Senator to the contrary, so there should be no implication that somehow this is going to be delayed through some foroe with which we cannot contend.

The decision tonight was a decision by every single Member of the Senate. We are all happy with it? Clearly not. The Senator from Missouri is very deeply and personally involved with this matter, and I respeot that. But the reality is that he agreed to this delay, as did each of the other 99 Senators. Any delay beyond next Tuesday would also require the consent of each and every Senator.

Third, I want to say that I have great respect for the Senator from Missouri, but I think there is a point of view which was not included in his remarks, and that point of view is that whatever the circumstances leading up to the situation—and I referred to them earlier—we are now confronted with a situation in which a serious allegation was made and with respeot to which public discussion, public hearing, was not possible prior to this week.

That was not something—certainly I will speak for myself—that I anticipated or could have antioipated. I speak for no one else. Being confronted with this situation it seemed to me that the reasonable, prudent, responsible, commonsense thing to do was to permit a brief period of delay within which there could be a public hearing on the matter and then to schedule a vote.

As the Senator from Missouri well knows, much of the time in disagreement over the past several hours has been over how long would be the delay. He proposed earlier today a 48-hour delay, suggesting that the matter could be investigated, hearings held, and a vote oocur on Thursday evening of this week. Many others felt that that time period did not permit the kind of fair and thorough inquiry that would be possible and that a somewhat longer period should occur. And the result is a compromise, as is almost everything we do here.

Some thought it should be longer than a week, some thought it should be less than a week, and the product of 4, or 5, or 6 hours of negotiation among a lot of people is that it will be a week.

I have great respect for the Senator from Missouri, but I think there are competing considerations here, and I think in the circumstance in which we found ourselves the result was a reasonable, fair and common sense one, and I do not believe that it does represent—I do not share the characterization of that whioh has been presented by the Senator from Missouri.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, I will not speak long. Clearly, I do not even feel comfortable trying to compete with the likes of my good friend from Missouri. And I want to say to him there are few times that I have been very pleased I was on the floor of the Senate in my 19 years in this body, and I want to tell the Senator that the last 30-or-so minutes was one of those rare occasions, not only because of the issues the Senator addressed but because of the depth of understanding the Senator has of what we are doing, and what we are not doing, and what we might be doing to this place, the Senate.

So I want to make a few remarks. And I am pleased that while there are not many Senators here, there are two leaders here, the Democratic leader and the Republican leader. And I say to both of them, as one Senator who has been here a while, and a Senator who is seeing Senator after Senator dismayed at what is happening to this place—no aspersion on the majority leader, no aspersion on the minority leader, just concern about what is happening to the Senate—I submit to the two Senators, if they do not proceed to make whoever it was who took an FBI file—and let us review in a moment what was in that file and under what conditions it was taken—if you do not proceed to see to it that that person, that staff member or that Senator, is determined and punished, you might as well forget about having any serious rules in this place.

There is no doubt in my mind that as I listened to the facts for the first time tonight by the chairman of the committee, because it was not told to the public, that as late as Monday he had a file, and the file was an FBI file, and the instructions from the witness were I do not want anybody to know my name, and I do not want to be called as a person; I just want the oommittee to know about it.

Now, let me tell you, that is serious business. What if that person was divulging something about a nominee and at the same time was saying that the witness has a very serious problem herself or himself? Think of that. Think of that. What if there would have been an admission by a witness that they had stolen money and committed a felony for which they were not charged, but I want to tell you that I am worried about this nominee.

Would not that just be wonderful? We would send that out to the press, and here would be a witness who wanted to help us and begged us not to reveal it, and what would happen? They would publish that the witness was a felon, and that the nominee was not to be nominated because he also was a thief, and here we would be.

That is why it is serious. And here we sit today investigating all kinds of things that Congress has done, and perhaps it is right. We are investigating bad checks, I understand, and we should. But I believe the day after this nomination is completed by this committee, an investigation of who did that and the appropriate punishment ought to be forthcoming.

In fact, as I read the statute, I say to the Senator from Missouri, it would even be worse than he suggested. It seems to me there is one section of the statute that may make it a crime to release to the public an FBI secret file. But, indeed, the Senate has contempt authority over the person who does it, meaning we can do whatever it is that our authority in contempt gives us. That makes it serious.

Now, why do I say this? I say this because, frankly, we are confronted—and on this I think the majority leader did the best he could. You are confronted with a witness now who after the story was leaked got on television and told everybody about it, and what are you going to do about it?

It is not that our leaders did not want a vote tonight. It is that a number of Senators who were going to vote a certain way were saying we want some more time. Let us only hope when that is all finished they will vote the way they did before and we will be finished and it will be something that comes up positive, Mr. President, rather than with the gloom and concern the Senator had in his voice and words tonight.

Frankly, looking at all of this, none of us can do much more than say well, let us go; let us do it; let us get the evidence. But let me tell you there are a lot of Senators who talked to me today who are absolutely close to being outraged at the way this case has evolved, not at Professor Hill, not at Clarence Thomas, not at JOE BIDEN, but at the way it evolved.

I say to the distinguished majority leader, whom I have known and got to respect greatly, I think he has to agree that something is wrong with this kind of process.

Now, another week is there, as the Senator from Missouri said, for everybody to have all kinds of new ideas about this person. He was literally confirmed for all intents and purposes. The Senate would have ratified him no doubt, somewhere between 56 and 59, maybe 60 votes, and now that is all out the window because somebody decided that the rules of the Senate for whom they worked or for whom they served did not amount to anything, and we just ought to let it go and get this thing started so we can get that Clarence Thomas. That is what it really amounts to.

So we have a witness who did not want any of this known who is now forced to make herself known. We have to think of that. We are all thinking about Clarence, but look at this professor. She did not want this. How did this happen to her? For the very same reason that I have just described it is happening to him—because somebody in this body does not care about what governs the Senate.

Mr. President, there may be people around, maybe even sitting up there, who think we should not have these kinds of rules.

In fact, I think they probably, some of them, would think it is good that everything will be known. But let me suggest if that is the case, then we had better change our rules because if we ask witnesses to testify before FBI agents with a set of rules, and it goes this time—and nobody does anything about it, and here we are asking them to do it, then we submit them to whatever happens—I submit it is going to get more and more difficult to get people to testify that way; more and more difficult to get decent Americans to accept nominations to very high and controversial posts.

We are getting very contentious as a people; very controversial. That is fine. How are you going to get people to do it under this kind of fact or these kinds of rules when actually it is dog eat dog? And if you can get something out there, it does not matter what rules we violate. Let us just go get them.

I want to say tonight to Clarence Thomas, we never expeoted you to have to go through this. I do not think the committee did. But, frankly, it will be over with soon. For those of us who thought very highly of you and knew you, we still feel the same way.

To Senator DANFORTH, from Missouri, let me say never has a Senator done a better job of helping and representing a friend of his, and for that, we can all be proud. We need a few more people like that around.

I yield the floor.

Mr. MITCHELL. Mr. President, I can appreciate the sense of outrage which we have seen here on the Senate floor tonight over the leak of this document as expressed by the Senator from New Mexico and the Senator from Missouri because I had much the same feeling myself a few months ago when day after day after day confidential documents before the Ethics Committee were leaked. I did not express it with quite the emotion that has been exhibited here this evening.

I do not think one can equate confidential documents submitted to the Ethics Committee with the FBI report in a legal sense but I am sure the Senator from New Mexico will agree the principle is the same. It is the Senate rule. The rule is violated. In the case of the Ethics Committee, it was not violated once; it was not violated twice; it was violated time after time after time, day after day after day. I wished then I had gotten up and expressed the outrage that the Senator from New Mexico had, and perhaps he would have joined me then.

Mr. DOMENICI. I can say right now I would have.

Mr. MITCHELL. I am sorry the Senator from Missouri has left the floor. They did not express that outrage on that occasion. But I am sure they had the same feeling about that.

So it is unfortunate. It is something I deeply regret and I strongly deplore. But in fairness, let us deplore it and regret it whenever it occurs, not just when it occurs in a circumstance in which an individual Senator is involved, or when it is adverse to the case that that Senator is pursuing. A leak which helps one Senator's cause is just as bad as a leak which hurts one Senator's cause.

So I join the Senator in his expression of condemnation. I hope the next time that it happens we will all join together, all of us, not only deplore it, but to do something about it, and I intend to try to do something about it. I intend to try to do something about it in every case in which it occurred.

Mr. DOMENICI. The majority leader can count on it. I do not think we can run the place too much longer with these kinds of rules, to tell the truth. I think there is going to be all kinds of actions on the part of the people who are going to be pressured and pushed by their emotions and sentiments, and they are going to say there is not anything holding us back.

So I think we ought to have rules. If they are broken, those who break them ought to be held accountable, whatever the rule, and to the extent that the rule is a significant one, or lesser, they would have to take the kind of punishment that is due.

Mr. MITCHELL. I agree with that.

Mr. DOLE. Mr. President, let me indicate to the majority leader that I do not disagree. If, in fact, you go back to a few cases of leaks, I do think the Senator from New Mexico had a good point. If some Member had written a bad check, this is big news. But leaking an FBI file does not seem to be very important to most people in the media. But if you have written a $5 check bounced in a House bank, that is a lead story on the evening news.

Somehow we have gotten values all out of whack. We have been talking about somebody leaked something. I think we ought to go back and take a look at the Ethics Committee, and this or whatever may be coming up.

I just say that I am prepared to cooperate with the majority leader because we do have rules. They should be followed. There are certain punishments prosoribed. But I do think we have a little tilt in the media too. That may take care of some of the leaks but others may be a one line, one page story.

Mr. BINGAMAN. Mr. President, I am pleased that the Members of the Senate have decided to postpone voting on the nomination of Judge Clarence Thomas to be an Associate Justice of the Supreme Court of the United States. As I said last week when I announced my opposition to this nomination, the advice and consent function is one of the most important duties entrusted to us by the people of this Nation. It is a duty we must not take lightly, for the very foundation of our democracy—the Constitution and the Bill of Rights—is at stake. And it is a duty we can perform only when we are fully informed, with full access to all relevant information.

Today, because of serious allegations made public just this weekend, I do not believe that we are fully informed. I do not believe that we have full access to critically important information, and I know we have not had the time to fully examine the information we do have. Mr. President, we have all heard the serious, troubling allegations regarding sexual harassment. We have heard Judge Thomas' denial of the allegations. But, again, we have not heard all the facts, and in my view, the allegations have not been given a thorough examination.

Mr. President, I have already announced my decision to oppose Judge Thomas' nomination. I simply do not believe he is qualified to serve on the Supreme Court. But I believe my colleagues—and the American people—deserve a full, public review of these serious allegations before being asked to support or reject this nominee. If confirmed, Judge Thomas could serve on the Supreme Court well into the next century. His actions over the next 40 or so years will impact our lives and the lives of our children, grandchildren, and great-grandchildren. Surely the vote can wait a few more days.

TECHNICAL AMENDMENTS TO VARIOUS INDIAN LAWS ACT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the previous Senate action on the message from the House on S. 1193, the bill to make technical amendments to the various Indian laws, be vitiated, and that the Chair lay the message before the Senate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1193) entitled "An Act to make technical amendments to various Indian laws", do pass with the following amendment:

Page 3, strike out lines 5 through 13 inclusive, and insert:

(b) REAUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL INDIAN GAMINO COMMISSION.—Section 19(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(b)) is amended to read as follows:

"(b) Notwithstanding the provisions of section 18, there is authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for the fiscal year beginning October 1, 1991.".

AMENDMENT NO. 1253

Mr. MITCHELL. Mr. President, on behalf of Senator INOUYE, I move that the Senate ooncur in the House amendment with the following amendment which I send to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Maine [Mr. MITCHELL], for Mr. INOUYE, proposes an amendment numbered 1253.

Mr. MITCHELL. Mr. President, I ask unanimous oonsent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the language inserted by the House amendment, insert the following:

(b) REAUTHORIZATION OF APPROPRIATIONS FOR THE NATIONAL INDIAN GAMINO COMMISSION.—Section 19(b) of the Indian Gaming Regulatory Act (25 U.S.C. 2718(b)) is amended by adding at the end thereof the following new sentence: "Notwithstanding the provisions of section 18, there are authorized to be appropriated such sums as may be necessary to fund the operation of the Commission for each of the fiscal years beginning October 1, 1991, and October 1, 1992.".

At the end of the bill, add the following new sections:

SEC. 5. AMENDMENT TO THE CRANSTON-GONZALEZ NATIONAL AFFORDABLE HOUSING ACT TO PROVIDE AUTHORITY FOR THE PROVISION OF ASSISTANCE UNDER TITLE IX OF THE ACT TO PROGRAMS ADMINISTERED BY THE STATE OF HAWAII UNDER THE ACT OF JULY 9, 1921.

(a) Title IX of the Cranston-Gonzalez National Affordable Housing Act (Public Law 101-625) is amended by adding at the end of subtitle D the following:

"SEC. 962. AUTHORIZATION FOR THE PROVISION OF ASSISTANCE TO PROGRAMS ADMINISTERED BY THE STATE OF HAWAII UNDER THE ACT OF JULY 9, 1921.

"(a) ASSISTANCE AUTHORIZED.—The Secretary of Housing and Urban Development is authorized to provide assistance, under any housing assistance program administered by the Secretary, to the State of Hawaii, for use by the State in meeting the responsibilities with which it has been charged under the provisions of the Act of July 9, 1921 (42 Stat. 108).

"(b) MORTGAOE INSURANCE.—

"(1) IN OENERAL.—Notwithstanding any other provision or limitation of this Act, or the National Housing Act, including those relating to marketability of title, the Secretary of Housing and Urban Development may provide mortgage insurance covering any property on lands set aside under the provisions of the Act of July 9, 1921 (42 Stat. 108), upon which there is or will be located a multifamily residence, for which the Department of the Hawaiian Home Lands of the State of Hawaii—

"(A) is the mortgagor or co-mortgagor;

"(B) guarantees in writing to reimburse the Secretary for any mortgage insurance claim paid in connection with such property; or

"(C) offers other security that is acceptable to the Secretary, subject to appropriate conditions prescribed by the Secretary.

Congress wants to see progress on issues such as respect for human rights and nuclear proliferation as well as trade.

Even on the trade front, some important steps remain to be taken. On November 26, a retaliation deadline for another unfair trade case against China will be reached. This case is directed at ending Chinese piracy of United States intellectual property. Hopefully, progress can be made with China on this issue to make retaliation unnecessary.

But unless substantial progress is made by November 26, I expect the administration to retaliate against Chinese exports as requlred under the law.

Further, the administration still has not fulfilled its pledge to actively support Taiwan's GATT application.

CONCLUSION

The steps the administration has taken to address Chinese trade practices demonstrate that it is willing to follow through on its policy of prodding China to reform while engaging China with MFN. For the time being, Congress should give the policy a chance to work and put legislation to condition or deny MFN to China on hold.

But China should recognize that Congress' patience is limited. Unless China undertakes reforms in a number of areas, it will eventually lose MFN.

Mr. President, I yield the floor.

Mr. EXON addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. EXON. Mr. President, I ask unanimous consent that I may be allowed to proceed in morning business for not to exceed 12 minutes.

Mr. DIXON. Mr. President, I will not object, and I do not object, but may I observe that the request of the distinguished senior Senator from Nebraska will take us out of morning business. I have no problem at all with that. I see no other Senators on the floor, but I would like the Chair to know that thereafter, I will announce my position on the Thomas nomination. So I have no objection at all to the request of the Senator from Nebraska.

The ACTING PRESIDENT pro tempore. The Senator from Nebraska.

Mr. EXON. Mr. President, to maybe clear up the matter right now, I ask unanimous consent that the Senator from Nebraska be recognized for not to exceed 12 minutes, and following that, the Senator from Illinois be recognized for 10 minutes, notwithstanding the other orders before the body that have been previously agreed to.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CONFIRMATION OF JUDGE CLARENCE THOMAS

Mr. EXON. Mr. President, first let me express a brief history of the recent developments of this one Senator and the part that I played in a matter of the confirmation of Judge Clarence Thomas to the Supreme Court.

On Friday, October 4, before I ever heard of Prof. Anita Hill, I addressed this body in support of the nominee. At that time the Judiciary Committee had completed its hearing and forwarded its written findings on the nominee to the Senate without recommendation. My support was based upon my assessment of the facts at hand and my personal conservations with the nominee.

Three days later on Monday, October 7, after revelations of that weekend, I was back on the floor suggesting a 1-week delay in the scheduled vote, to give the committee additional time to delve into the serious charges that had been leveled against Judge Thomas by Professor Hill. That delay came to pass.

It was a wise decision from the standpoint of fairness to all, including the nominee, his aocuser and the obligation of the Senate to more thoroughly investigate. Judge Thomas along with others eventually came to the same conclusion.

As a result of those extended hearings some startling but not surprising charges and countercharges were leveled. No one expected it would be a picnic but, weather notwithstanding, all were expected to attend. A good time by all was not in the offing because unpleasantness was a foregone conolusion.

There has been a legitimate cry nationwide for a revelation and determination of the faots and the truth. That is a logical and reasonable request but obviously oversimplified. Some have even gone so far to maintain that Thomas should be confirmed, because otherwise it would set a precedent that might prevent any qualified person from seeking high appointive positions in Government. Such reasoning or lack thereof, shreds the Constitution and lets King George do it as per pre-Revolutionary War days.

After carefully listening to both Thomas and Hill, this one member of the eventual jury of 100 feels both appear believable, but one seemingly is lying under oath, a criminal offense of perjury. Unfortunately, after the hearing, it is difficult, if not impossible for me to determine what the facts or truths are. I suspect that this might be the opinion of many who listened to the recently concluded hearings.

Last week during the hearing, I was disturbed about reported statements made by some of the Thomas supporters that if anyone testified against the nominee that witness would, in effect, have their heads served to them on a platter during the deliberations.

Likewise, I was disturbed by some information reaching me that some Hill supporters felt that unless Thomas was rejected, it would be the equlvalent of condoning sexual harassment of women.

The President has said as recently as Sunday that the charges against the nominee are ridiculous and that the process is ridiculous. This, Mr. President, from the man who from the beginning started the process with the ridiculous statements that his nominee was selected strictly because he was the best qualified individual in all of America and that the decision was devoid of any and all political or racial considerations. I clearly referenced my views of the President in this regard in my speech to the Senate of October 4. Ridiculous statements in all of this began with the President. Is it any wonder that the Nation is embroiled in this bitter controversy over ridiculous statements and conclusions magnified by the President's latest pronouncement from the golf course? You will forgive me if I employ my constitutional right to criticize King George.

Those whom I customarily turn to for advice on such important matters are deeply divided. My constituents, my family, my closest friends and even my staff are unbelievably split. Emotions are running amuck and from every direction more so that I oan recall previously from over 20 years of public service. The boat of discussion and decisionmaking has been so violently rocked that the rudder has been out of the water so often it is difficult to steer any sound course to sound determination.

Both of the principals in the controversy have been hurt and I feel deeply and personally for both. Judge Thomas was forthright in his denial and that impressed me. Professor Hill was equally forthright in what I interpreted as a difficult disclosure on her part. If her detailed statements of alleged sexual harassment are aocurate, it does not take just a woman to understand her anguish. Indeed, regardless of the eventual outcome of this matter, the controversy has clearly been beneficial in its significant contributions to necessary changes and understanding in the workplace.

Unfortunately, in my view, the hearings of the past few days have not produced any overall conclusive faots or definitive truths on the charges by Hill or the firm denials by Thomas.

The key and central issue here though is not what is in the best interests of either of the two antagonists. We cannot ignore what is fair or not fair to the individuals, nor the harm to either that our eventual decision will bring. But even more important than that is how our decision will affect the future. To assail the process or attempt to punish individuals or institutions which one might conolude in retrospect should have acted differently evades and tends to place out of focus the real object of the process, as painful as it is for all.

We must concentrate now on the all-encompassing issue as to whether or not Clarence Thomas should be confirmed for a lifetime appointment to the highest court in the land. On October 4, I supported the nomination on the floor on the basis of my knowledge at that time. Among other things I stated that I felt Judge Thomas met the test of judicial temperament.

Notwithstanding my appreciation of the nominee's rage at the allegations, I was surprised and disappointed at many of his statements. They were not made in a fit of instantaneous anger but rather well thought out and premeditated remarks. He said that he would have rather felt an assassin's bullet than go through the humiliating process; that he would rather die than withdraw his nomination; that the Senate had ruined his life and reputation; that the Senate hearing had been conducted in a manner equivalent to that of a lynch mob; that the process was ridiculous and like a circus. Those were phrases well orchestrated and employed by Thomas supporters. Such comments by the nominee, even under the circumstances, were at best overstatements. On the other hand, I have not been particularly impressed with the reasons advanced by Professor Hill as to how she could have brought herself to follow Judge Thomas so faithfully and for so long in her career given the sordid remarks allegedly made to her. I can understand her reluctance to make a formal complaint at the time and her not telling any or all of the vast array of Thomas supporting witnesses who seemed to be saying in testimony she should have confided in them. It seems to me such would have likely been promptly reported to Thomas which would not have been in her interests at that time.

Yet I cannot readily understand why a person with her talents would not have conveniently found for herself a more satisfying position and superior, quietly, if that were her wishes.

But now, Mr. President, it is decisionmaking time, and we cannot punt.

In conclusion, I have deliberated over this position and studied it for hours and hours, for days. There have been swings, pro and oon, as I watched the hearings for solid conclusions that never materialized. Unlike some might believe, there has been no pressure on me from any source other than my determination to do what was best and right under the circumstances.

There has developed in my mind no clear-cut correct choice, more a mixture of concerns and doubts. How best do we conclude this whole unhappy chapter?

Notwithstanding my reservations as to the nominee, I intend to vote for confirmation but without enthusiasm. It is my hope that, if confirmed, Judge Thomas will be a better Justice because of this ordeal.

It is my belief that he will not turn out to be the doctrinaire idealog on the Court, as he is projected.

We badly need some overall balanoe there. If confirmed, Judge Thomas has the roots and earlier experiences to provide that. Time will tell.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The time of the Senator from Nebraska has expired.

THE DEDICATION OF THE NATIONAL LAW ENFORCEMENT MEMORIAL

Mr. PELL. Mr. President, as honorary chairman of the National Law Enforcement Memorial Fund, it is a great pleasure for me to be able to call to the attention of the Senate today's dedication of the National Law Enforcement Memorial at Judiciary Square in downtown Washington, DC.

I became involved in this project through the efforts of my friend Ray Pezzullo and the Rhode Island Fraternal Order of Police, of which he was the President. At their urging, I introduced the original legislation, later signed into law by President Reagan, that established the memorial fund. It is a tribute to Ray and other early advocates of this project that we celebrate the dedication of this memorial today.

The dedication ceremony was attended by President Bush who has been a steady supporter of the memorial campaign from its inception.

Those of us who have watched the progress of this memorial are all truly impressed with what we saw today. It is a design that we can all be proud of and, most importantly, it is a design which will be a source of pride and comfort for the families and friends of those law enforcement officers who gave their lives in the line of duty.

We should not forget that the law enforcement community is made up of people. This memorial acknowledges the human side of law enforcement, a side that needs and deserves to be recognized and remembered. The memorial is a reminder that law enforcement depends finally on the men and women who work every day to uphold the law.

The establishment of this memorial has been aided immensely by the hard work of Craig Floyd, the chairman of the Law Enforcement Memoriai Fund, aiong with his staff and advisers. The memorial campaign has also benefited from the participation of its board of directors, which includes the Concerns of Police Survivors, the Fraternal Order of Police, and their president, Dewey Stokes, and the International Association of Police Chiefs.

A very great debt of thanks is owed also to the various Federal law enforcement agencies that have supported this effort including the Attorney General's Office, the FBI, DEA, the U.S. Marshals Service, and the Bureau of Alcohol, Tobacoo, and Firearms.

I am thankful for this opportunity to have served this cause and look forward to continued efforts on behalf of America's law enforcement community.

TRIBUTE TO RUTH TAYLOR

Mr. BURDICK. Mr. President, I note with sadness the recent passing of Ruth Taylor. I knew Ruth through her job as executive secretary to the last three directors of the AFL–CIO's committee on political education: Jim McDevitt, Al Barkan, and John Perkins. She impressed me as not only friendly and helpful, but as a committed worker for the cause of working people across America.

Ruth Taylor was an outstanding secretary with an exceptional devotion to her job. She joined the American Federation of Labor in 1948 as a secretary in its Labor League for Political Education. She joined COPE when it was formed by the merger between the CIO and AFL. She retired in 1989 after 41 years in the labor movement.

Far too often, secretaries do not get the recognition they deserve. In paying tribute of Ruth Taylor today, I pay respect to all the skilled secretaries across America.

THE BELLAGIO DECLARATION OF PRINCIPLES ON THE ENVIRONMENT

Mr. KENNEDY. Mr. President, an important conference on the environment took place at Bellagio, Italy, last August. It was cochaired by my constituent and long-time friend, Charles M. Haar, Brandeis professor of law at Harvard University on behalf of the American Academy of Arts and Soiences, and by Oleg Kolbasov of the Academy of Sciences of the U.S.S.R.

As a result of the conference, significant progress has been made toward future international collaboration in dealing with the common worldwide challenge of implementing sound environmental policies. Since the environment of our planet recognizes no political boundaries, the world community needs to join together in effective ways to address these serious concerns.

An immediate positive outcome of the conference is the Bellagio Declaration of Principles. I believe that the declaration will be of interest to all of us in Congress concerned with these issues, and I ask unanimous consent that the declaration and a list of participants in the conference may be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE BELLAGIO DECLARATION ON THE ENVIRONMENT

As environmental policymakers, lawyers, economists, educators, and elected and appointed officials from the U.S. and the